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PROCEEDINGS OF THE
CONSTITUTIONAL CONFERENCE
OF
FEDERAL AND PROVINCIAL
GOVERNMENTS

January 10-12, 1950

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.P.H.,
KING'S PRINTER AND CONTROLLER OF STATIONERY
1950

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Canada, Constitutional Conference of



Federal and Provincial Governments,
1st session, 1950



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CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

HOUSE OF COMMONS, OTTAWA

REPORT OF PROCEEDINGS

FIRST SESSION, TUESDAY, January 10, 1950

MORNING SESSION

The Conference convened at 10.30 a.m., Right Hon. L. S. St. Laurent, Prime Minister of Canada, in the chair.

Right Hon. L. S. ST. LAURENT: Gentlemen, my first duty, and it is indeed a pleasant one, is to welcome the Premiers of the ten provinces of Canada, their cabinet colleagues and other representatives of the provincial governments, to this conference in Ottawa.

Je tiens à répéter en français que c'est pour moi un devoir très agréable de souhaiter la bienvenue aux premiers ministres des dix provinces du Canada, à leurs collègues respectifs et aux autres représentants des gouvernements provinciaux venus à Ottawa à l'occasion de la présente conférence.

Nous vivons peut-être un moment important de notre histoire. C'est la première fois depuis la Confédération qu'une conférence porte exclusivement sur l'étude de notre constitution.

La réunion revêt un caractère historique à un autre égard, car ce sera la première conférence fédérale-provinciale qui ait lieu depuis que notre pays a atteint pleinement les limites géographiques qu'entrevoyaient les Pères de la Confédération. J'ai donc confiance d'exprimer les sentiments des représentants des neuf vieilles provinces du pays autant que ceux des représentants du gouvernement fédéral, en souhaitant particulièrement la bienvenue au premier ministre de Terre-Neuve et à ses collègues.

L'objet de la conférence est de chercher ensemble à élaborer une méthode satisfaisante de confier à des autorités responsables à la population canadienne, la compétence de décider des amendements qu'il peut être nécessaire d'apporter, de temps à autre, aux dispositions fondamentales de la constitution qui intéressent à la fois les autorités fédérales et les autorités provinciales.

Sans doute se manifesterait-il aujourd'hui, tout comme en 1867, d'appréciables divergences de vues quant aux meilleurs moyens de répondre aux besoins communs d'une nation qui, à elle seule, occupe la moitié d'un continent. Quatre-vingt-trois années de confédération ont bien affermi le sentiment d'unité et de communauté d'intérêts de notre population, mais il existe encore des divergences importantes que nous devons respecter si nous voulons résoudre de façon satisfaisante nos difficultés constitutionnelles, voire tous nos problèmes d'ordre national.

J'irais même jusqu'à dire qu'en élaborant une méthode d'amendement, il ne suffit pas d'admettre la réalité des disparités existant entre les attitudes, les opinions et les coutumes des diverses provinces et des diverses parties du Canada; il importe au plus haut point, je crois, que nous comprenions parfaitement combien ces disparités mêmes enrichissent notre vie nationale.

With your permission, I should like to declare the conference open; and if you find it convenient that we follow the usual procedure I should like to make an opening statement and then invite each one of you gentlemen to do likewise. After that I have no doubt it will be relatively easy for us to determine what will be the most effective way of charting the future procedure of our meetings.

It is our hope that this will prove to be an historic occasion. It is the first occasion since Confederation that a conference has met for the exclusive purpose of considering the constitution of our country.

The conference is historic in another sense because it is the first Dominion-Provincial Conference to be held since our country achieved the full geographic limits envisioned by the Fathers of Confederation. I am sure I speak for the representatives of the nine older provinces, as well as for the federal government, when I extend a special welcome to the Premier of Newfoundland and his colleagues from that province.

The purpose of this conference is to seek together to devise a generally satisfactory method of transferring to authorities responsible to the people of Canada the jurisdiction which may have to be exercised, from time to time, to amend those fundamental parts of the constitution which are of concern alike to the federal and provincial authorities.

There will no doubt be substantial differences of view today, as there were in 1867, as to how best to serve the common needs of a single nation stretching across half a continent. Eighty-three years of Confederation have greatly strengthened the sense of unity and common interest of the Canadian people, but differences still exist and are still important, and differences must be respected if we are to achieve a satisfactory solution of our constitutional problem, and, indeed, of all our national problems.

I would go further, and suggest that it is not merely necessary for us, in devising any amending procedure, to recognize as facts, the differences that do exist between the attitudes, the views and the ways of life of different provinces and different parts of Canada; it is, I believe, of the utmost importance that we should fully appreciate the values that these very differences have in enriching our national life.

And yet, while the elements of difference which are the bones of our federal structure must be respected, we cannot afford to permit differences to frustrate the continued development, in a desirable direction, of the nation as a whole.

It is a commonplace that the world of today is a world of ceaseless change and adjustment. If circumstances require that change should be made, it is essential that change should be possible.

Burke has been quoted as saying that "a state without the means of some change is without the means of its conservation". To conserve what has been achieved in Canada at the cost of great effort, our constitutional structure should provide the means for such change as circumstances may require.

Any procedure for constitutional amendment which may be adopted is likely to endure for a long time. That fact imposes a special degree of responsibility upon us. It means we must think, not only in terms of present circumstances and problems, but also of future probabilities and even possibilities. It means that each of us has to consider not only his particular part of Canada in the year 1950, but all of Canada for as far as we can see ahead.

In order to bring our task into focus it may be helpful if I recall the aim of the conference in the terms I used in the letter proposing it, which I addressed to the Premiers of all the provinces on September 14, 1949.

In that letter I said:

For some time the government has been giving consideration to devising a satisfactory means of removing the necessity, on every occasion on which an amendment to the British North America Act is

[Mr. St. Laurent.]

required, of going through the form of having the amendment made by the Parliament of the United Kingdom. It does not accord with the status of Canada as a fully autonomous nation that we should be obliged to have recourse to the Parliament of another country, however close our association with that country, to determine our own affairs. Moreover, it has been made increasingly clear to the government that the Parliament of the United Kingdom has no desire to perpetuate the existing anomalous situation any longer than is absolutely necessary.

You are, of course, aware that the federal government submitted to Parliament at its last session an address requesting an amendment to the British North America Act to vest in the Parliament of Canada authority to amend the constitution of Canada in its purely federal aspects.

That amendment, known as the British North America (No. 2) Act, 1949, has now been enacted by the United Kingdom Parliament, and has become a part of the constitution of Canada.

Under that statute, jurisdiction is transferred to the Parliament of Canada to amend the constitution of Canada with the following five important exceptions:

- (1) matters coming within the classes of subjects assigned exclusively to the legislatures of the provinces by the British North America Act of 1867;
- (2) rights or privileges granted or secured to the legislature or the government of a province by any constitutional act;
- (3) rights or privileges granted or secured by the constitution to any class of persons with respect to schools;
- (4) constitutional provisions regarding the use of the English or the French language; and
- (5) the constitutional requirement that a session of Parliament must be held once a year and that a general election must take place at least every five years, with a proviso for possible postponement of an election in cases of real or apprehended war.

The present position in regard to the amendment of the constitution, therefore, is that, in purely provincial matters, amendments can be made in Canada by each provincial legislature, acting entirely on its own responsibility in accordance with Section 92 (1) of the British North America Act of 1867; and in purely federal matters, amendments can be made in Canada by the federal parliament in accordance with the new section 91 (1).

In neither of these cases is there any necessity of applying to the Parliament at Westminster to give effect to amendments which may be desired.

There is, however, no means whereby legislative authorities responsible to the people of Canada can make such amendments as may from time to time be required in the third area of the constitution, namely, the part of our constitution that is of concern to both federal and provincial authorities.

In my letter of September 14 to the Premiers I said:

We recognize that amendments may be required from time to time in the national interest of those provisions of the constitution which concern both federal and provincial authorities, and that it would be desirable to devise a generally satisfactory method of making such amendments in Canada whenever they may be required.

This is the subject on which the federal government invited the governments of the provinces to confer. In my letter, I added these words:

Our aim is to reach agreement, as soon as possible, on a method of amendment which will relieve the United Kingdom Parliament of an embarrassing obligation, and establish within Canada full and final responsibility for all our national affairs.

We in the federal government believe—and representative spokesmen of all political parties in Parliament expressed agreement with this view—that it is desirable that there should be a means by which, if and when amendments are required to this joint portion of our constitution, such amendments can be made in Canada. It is our hope that the representatives of all the provincial governments have the same aim.

The time may come when, by reason of the development and progress of our country, it will be generally recognized that changes in some aspects of our federal-provincial relationships are needed. No one can say now when any such changes may be required or of what character they may be. But it would be unrealistic to assume that no changes will ever be needed.

We feel it is desirable to reach agreement on a procedure by which such changes can be made right here in this country by some process over which the Canadian people can exercise control. It must be realized that the Members of the Parliament at Westminster are accountable only to the electors of the United Kingdom, and that the electors of the United Kingdom have no interest in the exercise of legislative jurisdiction over Canadian constitutional problems.

The question is sometimes asked: why no amending procedure was provided in the British North America Act of 1867. The lack is not too difficult to explain. In 1867, and, indeed, for a good many years after 1867, there was no question that the United Kingdom Parliament had the power to legislate for Canada. The Parliament of the United Kingdom, before 1867, had repeatedly provided by legislation for the constitutional requirements of the North American colonies which were included in Confederation. The new Canadian nation of 1867 was not created as a sovereign body.

When amendments to the British North America Act were required in the period after 1867, the amendments were made as a matter of course, by the Parliament of the United Kingdom. Yet it is worth noting that no amendment of substance originated with the United Kingdom authorities, and that all such amendments were made at the request of the Canadian authorities.

The Constitution Act which established the Commonwealth of Australia in 1900, and the South Africa Act which established the Union of South Africa in 1909 both made provision for amendment of those constitutions within the borders of the respective countries. In the drafting of constitutional instruments in this century it has been the accepted practice to provide machinery for constitutional amendment within the country concerned.

Canada is today the only nation in the Commonwealth lacking full capacity to amend its own constitution, by its own action, and our country is indeed the only sovereign state in the world which lacks this power.

The development of complete nationhood by Canada; the establishment of the constitutional principle, confirmed by the Statute of Westminster, that the United Kingdom and Canada are equal in status, and that neither country interferes with the affairs of the other, would make it extremely difficult—if not impossible—for the authorities in London to reject a request for any kind of amendment to the British North America Act, if that request was in the form of an address from both Houses of the Canadian Parliament.

The only way in which we Canadians can be sure of avoiding inexcusable embarrassment of ourselves, and of the United Kingdom, its Parliament and its government, in these matters, is by agreeing on a method of amending our own constitution within Canada which will enable us to discharge our full responsibilities for ourselves.

Until we do this, the legal position will continue to be that the only way in which amendments could be made to those parts of the constitution which are of joint concern to the federal and provincial authorities is by an act of the United Kingdom Parliament.

[Mr. St. Laurent.]

This Conference, therefore, has three principal purposes all of which are related, and yet each of which is, in some respects, distinct from the other. These three purposes are:

(1) To complete the process of placing within Canada the power to amend our constitution;

(2) To provide safeguards for the historic minority rights incorporated in the constitution;

(3) To establish adequate guarantees of the federal character of the constitution by providing for the participation of both federal and provincial authorities in the appropriate amending procedure.

The task before the Conference is, therefore, of a fundamental character. The Fathers of Confederation devised a constitutional framework, which was suited to the position of Canada at that time, as a semi-independent but subordinate dominion of Great Britain. Our present task is to bring our constitution into accord with the position of Canada today.

That means, first of all, that we must be able to make right here in Canada whatever constitutional changes we may require from time to time.

It also means that we must be sure the constitution contains adequate safeguards for those historic minority rights which are the sacred trust of our national partnership.

These rights are regarded by Canadians as having a particularly sacred character, yet, so far as the law is concerned, they have no more protection than any other provisions of the constitution.

The federal government considers absolute protection to be essential, and we would favour the strongest possible legal safeguards anyone could devise. That in nowise runs counter to the firm belief of so many of us that there is something stronger than any legal safeguard, and that is the good faith, the mutual tolerance, and the common understanding which are the highest glory of most Canadians, regardless of whether English or French happens to be their mother tongue.

The joint address submitted to parliament this year, and now embodied in the British North America (No. 2) Act, 1949, was the first occasion on which the Parliament of Canada formally affirmed that these historic rights should be safeguarded legally.

The federal government and Parliament have already gone as far as they can go alone in providing such safeguards.

It must be obvious, however, that a complete safeguarding of these rights, in order to be effective, must be accepted by the provincial authorities and incorporated into the constitution itself through another act of the United Kingdom Parliament.

As to the third purpose of the conference, namely, the devising of a general procedure of amendment for the joint federal-provincial portion of the constitution, we start with the proposition that the integrity and strength of the provincial authorities, and the integrity and strength of the federal authorities are both vital to the well-being of the Canadian people.

It is, and has always been, the view of the present federal government that the exclusive jurisdiction of the provinces which gives a federal character to the constitution of Canada must be respected.

I should like to repeat again the opinion I have expressed on many occasions that, regardless of the legal position, nothing placed by the constitution under the jurisdiction of the provincial legislatures should be dealt with or altered without provincial participation.

I stated in the House of Commons on January 31, 1949:

"With respect to all matters given by the constitution to the provincial governments, nothing this house could do could take anything away from them. We have no jurisdiction over what has been assigned exclusively to the provinces."

I expressed similar views in the House of Commons on July 5, 1943, and again on May 28, 1946.

It has always been my view that any procedure for amendment of the joint portion of the constitution must make proper provision for participation by both the federal and the provincial authorities.

At the same time, we cannot afford to lose sight of the fact that the federation established by the Fathers of Confederation on the northern half of this continent was to be a nation with capacity for growth and development. The achievements of our people, in war and in peace, have given to Canada a high place, not only in North America, but among the nations of the world. And it is, I believe, the desire of the vast majority of Canadians, regardless of origin or province, to see everything done which may be required to ensure the development of a vigorous and healthy national life.

It is almost inconceivable that such development will not require constitutional changes from time to time of a character which affect both national and provincial authorities. It is our task as Canadians to find a way to make these changes which will preserve the right balance between respect for provincial autonomy and provision for national development.

Turning to the actual procedure for making within Canada future amendments to those provisions of the constitution which are of joint federal-provincial concern, the federal government does not intend to put forward any concrete proposal. What we have to discuss is the establishment in Canada of a procedure which will involve the appropriate participation of both federal and provincial authorities.

Since it is obvious that the federal parliament will participate in any amending procedure, we feel that the representatives of each of the provinces should put forward their views as to the most appropriate form of provincial participation. It is our hope that the conference may find the means of reconciling the various proposals put forward and reaching a conclusion satisfactory to all.

The problem of devising a procedure for constitutional amendment has been repeatedly considered in parliament and in the provincial legislatures, and has been a subject for consideration at various conferences in the past. It is doubtful whether the failure of repeated efforts in the past will provide us with much guidance except, perhaps, a feeling that some fresh approach to the problem is needed. It is possible that the conference will reach conclusions similar to some of those which were suggested in previous years, but I cannot emphasize too strongly that we are not in any way bound or limited by previous approaches.

To sum up, the federal government believes that any satisfactory method of amendment must meet three tests. It must protect minority rights absolutely. It must preserve the federal character of the Canadian nation by preserving the autonomy, within their respective spheres, of the provincial legislatures and of parliament itself. It must have sufficient flexibility to enable our country with all its great human and natural resources to continue to go forward as a dynamic nation.

What we are chiefly concerned with is to devise a method that will meet these tests with respect to possible future amendments of the distribution of powers between the federal and provincial authorities. So that there may be no doubt on this point, I should like to make it clear at the outset that the federal government is not seeking through this conference to make any alteration in the existing distribution of powers. We do not feel that it would be appropriate for this

[Mr. St. Laurent.]

conference to consider the transfer of any powers, either from the federal to the provincial field, or from the provincial to the federal field; particularly in view of our hope that the general field of dominion-provincial relations will be the subject of a conference in the autumn of this year.

I feel it would be quite unrealistic to expect that we can at this meeting finally settle all the details of a procedure which would be acceptable and satisfactory everywhere in Canada and for as far as we can hope to see into the future.

But if we can find from our discussions that we are all agreed about the desirability of devising such a procedure, that we are all prepared to devote together wholehearted endeavours to accomplishing something which will create throughout the nation a feeling of confidence that the fundamental basis of our constitutional structure is to be fully and adequately safeguarded; if we can reach general agreement on what are the essential provisions which should be so safeguarded, and on what should be the form and extent of provincial participation in amending procedures, we will have gone a long way towards our real objective.

We all remember that the Imperial Conference of 1926 agreed on some general principles and declarations, and that a subsequent conference of representative experts was required to work out the draft of what became in 1931 the Statute of Westminster.

No conference of experts could go very far without a prior general agreement on basic principles, but it would hardly be expected that even the most complete agreement on basic principles would amount automatically to a satisfactory code of amending procedure ready to be enacted into a constitutional statute.

As an essential step, therefore, this conference presents a very real challenge to the political capacity of the public men of Canada. Sooner or later this challenge will have to be met, because sooner or later the people of Canada are going to insist that somehow means shall be found by which complete jurisdiction over the constitution of Canada is established in Canada.

Now, may I invite the Premier of Ontario to speak?

HON. LESLIE M. FROST (*Premier of Ontario*): Mr. Prime Minister and gentlemen: I am sure that I would want to be associated immediately with the Prime Minister's opening remarks in relation to the family of provinces, and the addition we have had in the place occupied at this table by the great province of Newfoundland. We all feel that Canada has been enriched by the history and tradition of those grand people. I am sure, Mr. Prime Minister, that all want to be associated with your remarks in that regard. I may say that if I have unwittingly mispronounced the name, Newfoundland, I sincerely apologize to Mr. Smallwood. I have noticed that in some parts of Canada there is a difference in the pronunciation of that name, and if Mr. Smallwood would clarify that matter it may remove one of the obstacles to agreement between the provinces. Certainly, we do not want to cause any difficulty because of our lack of understanding of the proper pronunciation of that historic name.

My remarks here, Mr. Prime Minister, will be comparatively brief.

We are here to find answers to two questions. One is, should we have power in Canada to amend our own constitution in respect to matters which are the concern of both provincial and federal authorities? Second, if so, by what method?

As I understand it, we have not been called here to discuss proposed amendments to the constitution but rather to examine whether we should have power in Canada to make amendments if the need should arise and by what method. Ontario is not here asking for anything, nor is it being asked to give anything away. The one purpose is to consider and answer the two general questions which I have stated.

In dealing with the first question, we all have regard for our history and traditions, and rightly so. We all take pride in these things. Since its earliest days, Upper Canada, now Ontario, has been jealous of what used to be termed its "British connection" and now its "relationship with the British partnership, the British Commonwealth of Nations." Ontario had its beginnings with those people who came to this country in the 1780's because they had faith in the future of the British partnership, a faith which has been amply justified by history. I do not desire to deal lightly with this attachment, which I believe has meant great things for the world, and I know the people of Ontario would hesitate greatly to do anything which would weaken our partnership with that great family of nations.

Again may I refer to history. In 1926, an Imperial Conference referring to the Commonwealth stated, "the group of self-governing communities composed of Great Britain and the dominions are autonomous communities equal in status and in no way subordinate to one another." Sir John Macdonald, a firm believer in the British connection, was one of the principal architects of this group of self-governing communities. It was his belief that self-government and autonomy did not weaken but indeed strengthened the partnership.

One has only to call to mind the great efforts of the British Commonwealth in the two world wars to accept the truth of this statement. I have no hesitation in saying that arriving at a method to amend our own constitution in Canada in no way weakens our ties with the British Commonwealth and, in fact, I think it would add strength to them. Ours was the first federated dominion. Powers of amendment were not included in our constitution. In dominions subsequently formed, such as Australia, a procedure for amendment was provided. There is no reason why Canada should not have had such powers at the very commencement, and there is no reason now, in 1950, why we should not finally settle this point.

It is true that in 1930-31, when the Statute of Westminster was being considered, section 7 of that statute was inserted on the insistence of Canada, which had the effect of nullifying the statute in so far as it applied to the amendment of the Canadian constitution. The reason for this appears to me to be obvious. The other self-governing and autonomous communities already had methods by which they could amend their constitutions. In Canada we had no such method, and it was only logical at that time that we should ask for the insertion of section 7, which left the matter of Canadian constitutional amendment in its then position, until such time as the government of Canada and the provinces agreed upon a method of amendment, if such was desirable.

These are some of the points which we have to consider at this conference. In answering the first question in the affirmative, I say there is nothing which does violence to the history and traditions of Ontario. Indeed it is only a logical step following a far greater step, that of confederation itself, some eighty-three years ago.

The method of amending our constitution has been by way of an address from the parliament of Canada to His Majesty the King praying that a measure be laid before the parliament of the United Kingdom covering the amendment desired. As a matter of practice the parliament of the United Kingdom has always acquiesced in amendments proposed by the parliament of Canada. One authority says that thirty-two acts and orders in council have been passed since 1867 which apply specifically to Canada, and that of these twelve can qualify as genuine amendments to the constitution. To these must be added two more, namely the British North America Act, 1949, respecting the entry of Newfoundland into the union, and the British North America Act, 1949, No. 2, authorizing the dominion parliament to amend the constitution in certain classes of subjects. In some of these cases the provinces have been consulted.

[Mr. Frost.]

This method of amending our constitution might be the cause of very serious embarrassment to the parliament of the United Kingdom; and indeed, in the event of a highly controversial amendment being requested, it might be the cause of a division in the family of nations to which we belong. I have no doubt that the parliament of the United Kingdom would much prefer that we handle matters of this sort ourselves and that we should determine ways and means of so doing within our own boundaries and using our own machinery. It would be inconsistent with our place in the commonwealth as a self-governing and autonomous country equal in status and in no way subordinate to any other that we should take any other position. It would be inconsistent with our history and with the growth of the strong nations forming the British commonwealth.

Now, Mr. Prime Minister, I have felt that it would have been better if this conference had dealt with this matter as a whole instead of piecemeal. I refer to the British North America Act, 1949, No. 2, and the abolition of appeals to the privy council. Appeals to the privy council formed part of our constitutional machinery, and the abolition of appeals might conceivably have more effect on the provincial position than is presently realized. However, I do not intend to elaborate on these important points at this time, though I shall refer briefly to the former point in a moment. Nor do I think that this procedure should stand in the way of the representatives of the province of Ontario attempting to find a solution which will enable us to make all amendments in Canada ourselves.

Without hesitation I answer the question: "Should we have power in Canada to amend our own constitution?" in the affirmative.

Concerning the second question: "If so, by what method?" the answer for us is not so simple. I think again we should bear in mind that we are not here to discuss whether our constitution should be amended but how it should be amended, if at any time we desire to do so. I shall not discuss this matter in detail at this time, but it occurs to me that the method should be

- (a) elastic enough to meet the needs of a growing and developing nation;
- (b) difficult enough to discourage indiscriminate tampering with our constitution;

- (c) rigid enough to provide ample safeguards to protect minorities and fundamentals and the federal system under which we have developed so satisfactorily during the last eighty-three years.

The Prime Minister, in his letter of September 14, 1949, calling this conference stated that—

—it was the view of the government that a method should be worked out to amend our constitution in Canada, and that any such method should include the fullest safeguards of provincial rights and jurisdiction, and the use of the two official languages and of those other rights which are the sacred trust of our national partnership.

He also referred in that letter to the decision of the government to submit to parliament an address requesting an amendment to the British North America Act by the United Kingdom parliament which would vest in the parliament of Canada the authority to amend the constitution of Canada, but only in relation to matters not coming within the jurisdiction of the legislatures of the provinces, nor affecting the rights and privileges of the provinces, or existing constitutional rights and privileges with respect to education and to the use of the English and French languages. Such an amendment, he said, would—

—give the Canadian parliament the same jurisdiction over the purely federal aspects of the constitution that the provincial legislatures already possess over the provincial constitutions.

May I point out that the provincial powers of amendment are comparatively limited, while the powers obtained by the federal authority under the British North America Act, 1949, No. 2, are exceedingly wide—I think much wider than is generally realized. Although this power of amendment relates to subjects which are federal in nature, in many cases revisions made under this amendment could have very wide provincial effects. Should not, then, amendments to the constitution in these important matters be done by machinery more comprehensive than merely passing an act of the parliament of Canada? For instance, the constitution of the United States cannot be amended even by a two-thirds majority of the two Houses of Congress; the ratification of a certain proportion of the states is necessary. Where matters so vital to confederation are concerned, should not the procedure for amending the constitution be arrived at in this conference?

In his address the Prime Minister referred to essential provincial features which must be safeguarded, and it may be that in spirit he agrees however, that is only my interpretation after having listened to his remarks.

We from Ontario are prepared to discuss and consider any proposals which may be advanced by any of the governments here. We are prepared ourselves to advance proposals, not in a dogmatic way but as a basis only for discussion and consideration. We believe that if this conference decides that there should be a method of amending our constitution, then the representatives here can find the way. If the fathers of confederation could find a basis for union—an immensely difficult problem indeed—we in 1950, in the same spirit, can find a way to make amendments ourselves which will be satisfactory to all the governments and to all the interests in our country. The representatives here from Ontario are prepared to give their fullest co-operation, with the hope that an early and complete solution will be found.

L'hon. MAURICE DUPLESSIS: (premier ministre de la province de Québec)

Messieurs les Premiers ministres et messieurs les Délégués:

Il me semble approprié que les premières paroles du représentant de la province de Québec à cette conférence très importante soient prononcées dans la langue française, dans la langue de la province de Québec, dans la langue maternelle des découvreurs et des pionniers de ce pays.

Nous sommes convaincus que la Confédération canadienne n'a pas conféré de droits en matière de langue. Elle n'a fait que les constater, car les droits de la langue française avaient été affirmés, acquis et reconnus bien longtemps avant l'Acte de l'Amérique britannique du Nord.

Au début de l'année c'est un agréable devoir d'offrir, au nom de la province de Québec, nos souhaits de bonne et heureuse année à tous et chacun.

A notre avis il convient que, dès le début de cette conférence d'une importance vitale, l'attitude de Québec soit clairement définie et ne laisse place à aucun doute sérieux et honnête.

En principe la province de Québec est absolument en faveur d'un tribunal canadien, composé de Canadiens, siégeant au Canada et jugeant en dernier ressort, conformément à l'esprit du pacte fédératif, de toutes les questions canadiennes qui peuvent lui être soumises. En outre, la province de Québec est absolument en faveur d'une constitution essentiellement canadienne, élaborée et édictée au Canada, par des Canadiens et pour les Canadiens et basée sur l'esprit fédératif et l'âme même de l'Acte de l'Amérique britannique du Nord de 1867.

Je dis ces choses dès le début pour qu'il n'y ait ni mésentente ni malentendu raisonnablement possible à ce sujet. Nous sommes fermement persuadés qu'au

[Mr. Frost.]

cours de cette conférence, plus que jamais si possible, la franchise et la loyauté sont de mise, parce que nous considérons que la franchise et la loyauté sont essentielles à l'unité bien comprise et constituent une base indispensable à la prospérité durable du pays et des provinces.

Je ne participe pas à cette conférence comme chef de parti, et je ne considère pas le Premier ministre du Canada à cette conférence comme un chef de parti.

Je participe au travail de cette conférence à titre de Premier ministre de la province de Québec, et je considère que le très honorable monsieur St-Laurent est ici le Premier ministre du Canada.

Nous désirons que toutes les questions soient étudiées et décidées à la lumière de ces principes et que la partisanerie politique, quelle qu'elle soit, n'ait pas de place ici, parce que ça doit être l'endroit par excellence d'un sain et fécond patriotisme.

Il nous semble qu'à l'heure actuelle certains amendements à la Constitution canadienne sont désirables, mais c'est notre conviction irrévocable que l'âme de la Constitution canadienne doit être respectée dans son intégrité. A notre avis, toute la question constitutionnelle devrait être étudiée à cette conférence, et non pas seulement la partie de la Constitution que les autorités fédérales ont d'abord soumise à la considération des délégués. La partie très importante de la Constitution qui a été décidée d'une manière unilatérale par le Parlement fédéral tout dernièrement devrait également être au nombre des sujets soumis à l'étude et à la décision des délégués. Quant à nous, la Constitution canadienne forme un tout et la seule façon de la respecter c'est de respecter son unité, c'est de respecter ses fondements d'unité.

En toute honnêteté et sans aucune arrière-pensée de critique, nous exprimons l'opinion qu'il n'est pas raisonnable et qu'il n'est pas conforme à l'unité nationale bien comprise, et que tous nous désirons, que l'autorité fédérale s'arroge le droit de choisir de façon unilatérale les arbitres appelés à décider des droits respectifs de chacune des parties. Nous considérons que ceci est absolument opposé au "fair play" britannique et au fondement même du régime fédératif. Nous désirons coopérer à la grandeur du Canada, à son succès, ainsi qu'au progrès et à la prospérité des provinces, mais dans le respect des droits de chacun. Nous comprenons qu'il existe dans la Constitution des clauses moins importantes les unes que les autres, mais nous savons qu'il y a aussi des clauses fondamentales, telles, pour n'en mentionner que quelques-unes, celles qui se rapportent à la langue, à la religion, à l'éducation, au droit civil et au droit de propriété. C'est notre ferme conviction que dans le domaine des clauses fondamentales aucun compromis honnête n'est possible et Québec ne doit pas et ne peut pas se prêter, soit directement, soit indirectement, à des compromis de ce genre.

Nous, du Québec, sommes venus ici les mains grandes ouvertes, non pas pour céder ou abandonner nos droits, mais pour donner à tous et chacun des délégués une franche poignée de mains et pour travailler tous ensemble à la grandeur et à la prospérité du pays et des provinces, dans le respect intégral des droits essentiels de chacun.

Mr. Prime Ministers and delegates, it is a pleasure, at the beginning of the year, to extend to one and all the hearty good wishes of the province and of the government of Quebec.

We fully realize the vital importance of this conference. At the very outset, I think that some brief statement of facts should be made so as to do away with any reasonable doubts or suspicions concerning the attitude of the

Province of Quebec. The Province of Quebec is heartily in favour of a Canadian constitution decided upon in Canada by Canadians and for Canadians, and amendable through appropriate constitutional and fair methods. We are most anxious to co-operate in finding and applying such methods of amending the Canadian constitution for the real and lasting benefit of the central and provincial authorities. We are heartily in favour of a Canadian tribunal, composed of Canadians, sitting in Canada and having the power to decide in last resort, but according to the very spirit of the constitution, the claims which could be submitted to it. These fundamental principles having been clearly stated, it is appropriate for us to express to the other delegates the views of the Province of Quebec. It is also important that there should be a frank statement of policy.

In the Province of Quebec we consider that the British North America Act does not create our rights, but only confirms and reasserts the rights of our province. Confederation was not born spontaneously; it is the result of years and years of study and deliberation and the very essence of Confederation is made of sovereign provincial authorities, within the scope of their jurisdiction, and of a sovereign central authority, within the scope of its jurisdiction. When Confederation was discussed and decided upon, it was based on the principle of complete provincial autonomy. And this for excellent reasons, the most important of which is that Confederation is not only from its very beginning, an agreement between four pioneer provinces but it is a sacred covenant between two great races whose friendly co-operation is essential to the weal and prosperity of all concerned.

This fundamental principle cannot and should not be tampered with. To our mind there cannot be any compromise whatever when it comes to decide the kind of administration suitable to Canada. I firmly and definitely believe that Canada is and should always be a federation of autonomous provinces. Apparently there seems to be agreement on all sides on this point—but in fact this is not so. Some people declare themselves in favour of provincial autonomy but do not seem to agree when we contend that provincial autonomy cannot exist without definite and indispensable fiscal powers and that it is useless to have a declaration of rights if, at the same time, there is no financial and fiscal power to exercise those rights. I believe that Confederation should be what the Fathers of Confederation intended it to be, in good faith, that is, sovereign provinces within the limits of their jurisdiction and a sovereign central government within the limits of its jurisdiction. There are some who, for what seems to us to be excellent reasons, think that the British North America Act is a treaty of union between two great races; others are of the opinion that it is only a law. I firmly believe that Confederation is a treaty of union between two great races. Irrespective of these differences, the fact remains and cannot be reasonably denied that Confederation is the result of an agreement between four provinces which was ratified by Westminster. Without agreement on the Resolutions there would never have been the Act of Westminster, there would never have been Confederation. The fact is undeniable that the Canadian constitution is founded essentially and fundamentally upon the agreement of the four pioneer provinces. Lord Carnarvon, in the House of Lords, and Mr. Adderley, in the House of Commons, when introducing the Act at Westminster, declared it to be a treaty of union. The Province of Quebec would never have agreed to enter into Confederation had it not been made abundantly clear, at that time, that the guarantees upon which Confederation is based were to remain and last. This opinion is not a personal one, it is not only the opinion of the Province of Quebec; it is the considered opinion of very many Canadian and English statesmen and jurists.

The problem we are called upon to study and discuss is not a particular one, it is not a political problem. It is a national problem and we wish to consider it as such. In my humble opinion, the federal authority should submit to the conference not only part but the whole of the constitutional problem. This would be conducive to more friendly relations and more friendly co-operation. There can be no denying the fact that Canada cannot prosper and will not prosper and Canadian unity, well understood, will not be realized if there are still doubts and suspicions on fundamental questions. Let us all be friends, let us all be good Canadians. This country of ours is much bigger than any one of us. No man in this world is brilliant enough to have a monopoly of science and knowledge. Let us, in a friendly way, exchange our views; co-operation is not a one way street. Let us all work together, study our problems and find the best possible methods of settling them on a sound, friendly and constitutional basis.

In Quebec, as elsewhere, we have a real desire for a great and prosperous Canada and for great and prosperous provinces. We ardently wish every province to be happy, and we consider that the best way to achieve the desirable and desired end is by fully respecting the soul and spirit of our constitution, that is to say by having a real federal system based on a federal authority and provincial authorities having, not only the power to legislate and administer but having also the clear and essential financial powers sufficient not only to deal with the present, but to cope with the future, because to govern is to foresee.

Quebec believes in responsible government and we contend that there cannot be responsible government without indispensable financial powers. Bearing in mind these fundamental principles I am convinced that we can arrive at a fair and appropriate solution of our problems.

I congratulate the Prime Minister of Canada for having decided to hold the present conference, and I can assure all the Prime Ministers and all the delegates here that every one can rely on the wholehearted and loyal co-operation of the Province of Quebec in seeking, finding and applying the best possible methods that will insure completely and definitely the rights, prerogatives and liberties of the central authority and of the provincial authorities.

The Hon. ANGUS L. MACDONALD (*Premier of Nova Scotia*): Mr. Prime Minister of Canada, Prime Ministers of the provinces, delegates, and gentlemen:

As a near neighbour, I have to begin by saying how very delighted I am as a Nova Scotian to see here for the first time the premier of Newfoundland. We are all glad to see him here and we are happy that his province is now a member of the Canadian family.

I thought fit to reduce to writing what I have to say on this occasion. I believe the importance of the Conference justifies a strict adherence to what has been written, and I shall follow closely these notes.

I. PURPOSE OF CONFERENCE.

This is to discuss the feasibility of devising a constitutional amendment which will enable subsequent amendments to be made in Canada without resort to the Parliament of the United Kingdom; except as to matters already within the exclusive jurisdiction of the Canadian Parliament, pursuant to the B.N.A. Act (No. 2) 1949, or of the provinces under S. 92 (1) of the Act of 1867.

It is to be noted that what is to be considered is a general procedure for amendment and not the consideration of particular amendments. We are concerned here with methods, rather than with the substance of amendments.

The province of Nova Scotia assumes that the Conference will not attempt to draft an amending procedure, but will explore the views of all concerned in the effort to secure a basis of agreement in general terms, capable of being put into the form of a draft statute after further discussion by a committee appointed by this Conference. It is our view that what is sometimes called a continuing

committee should be set up to prepare, perhaps several different methods to accomplish the purpose, and that this Conference at some later date should re-assemble to consider those suggestions and if possible on that second occasion to come to a conclusion.

II. GENERAL ATTITUDE OF PROVINCE.

(a) The Province believes that the amending process should provide for proper participation therein of the provincial legislatures—as opposed to unilateral action by the Canadian Parliament—so as to preserve from impairment the federal principle embodied in the Constitution.

(b) The Province recognizes that if there is to be a general power of amendment the ultimate guarantee of essential rights of provinces and citizens generally will reside in the body or bodies which can exercise that power.

(c) The Province approaches the Conference as a new starting point in the endeavour to secure a procedure sufficiently elastic to admit of amendments where necessary yet sufficiently restricted as to preserve stability in our Constitution.

(d) The Province does not regard the Conference as one which should be too much concerned with precedents of a legal or conventional character as to methods of constitutional amendment employed in the past; we hope rather that the Conference will consider what methods are expedient for the future.

(e) In particular the Province does not accept interpretation of former precedents as eliminating the necessity for provincial consultation or consent when amendments proposed by the Canadian Parliament involve matters of provincial concern; nor the abrogation of the right of any province to be heard in protest against amendments which it may regard as adverse to the interests of the province or its people.

(f) The Province does not assert that all amendments should receive unanimous consent of the provinces though it reserves the right to do so with regard to particular classes of amendment involving matters fundamental to Canadian Federalism.

With the above considerations in mind the Province will endeavour to play its part in seeking agreement as to an amending procedure which, whilst conserving the basic rights of the provinces and the fundamental rights of individuals, appears calculated to provide a desirable measure of flexibility in our Constitution.

III. THE SUBJECT MATTER INVOLVED

The Prime Minister in his initial letter referred to the desirability of devising a method of amendment of “those provisions of the constitution which concern both federal and provincial authorities.”

In his opening address today the Prime Minister more than once repeated the statement from his letter which I have just read, namely, the amendment of “those provisions of the constitution which concern both federal and provincial authorities.”

Subsequently to the writing of the letter the British North America (No. 2) Act, 1949, was passed by the British Parliament amending section 91 of the B.N.A. Act by inserting the following clause:

The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, or as regards rights or privileges by this or any other constitutional Act granted or secured to the legislature or the government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of

[Mr. Macdonald.]

Commons shall continue for more than five years from the day of the return of the writs for choosing the House provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

That is the full text of the amendment, or at any rate of the vital part of the amendment. Gentlemen, again I draw your attention to the opening words: "The amendment from time to time of the Constitution of Canada." I think that fundamental questions at once arise at this point.

First of all, what is meant by the phrase "The Constitution of Canada" in this clause? Is the effect of this clause that the Parliament of Canada can amend all sections of the B.N.A. Act other than those specifically excepted therein? If the answer is "No" then what sections of the B.N.A. Act can be amended by the Dominion Parliament under the clause? Mr. Prime Minister, I think it obvious at best that until these questions are answered it will be impossible to proceed with the discussion for which this Conference was called. I am not sure that in all the statements that have been made with regard to the real purpose of the amendment there is complete harmony. It may be that the statements in essence amount to the same thing, but it is vital that we should be clear as to what is meant by the Constitution of Canada. Until we are clear on that point it will be difficult to proceed.

In addition to devising an amending clause enabling the amendment of matters of mutual dominion-provincial concern there is also involved the question as to the procedure for amending the amending clause itself.

IV. AMENDING PROCESS—IN GENERAL

(a) The amending process should require the association of both the dominion and the provinces.

(b) The province believes that the amending process should require only the participation of the legislative bodies of the dominion and provinces. It sees no advantage to be had by importing such machinery as popular referenda or constitutional conventions into a process which is essentially one for the established legislative bodies.

V. TYPES OF CONSTITUTIONAL PROVISIONS

As there is more than one type of provision in the constitution which will be covered by the enabling amending clause the province does not believe it necessary or desirable that there be one uniform method of amendment applicable to all. Rather the province believes that there should be a prescribed method for each main type of provision, with safeguards proportionate to the importance of the interests concerned.

Without attempting to be exhaustive it may be suggested that these provisions fall into the following classes:

(a) Provisions concerning the dominion only, e.g. Sections 23, 24, 30-36.

These are sections of the type that we feel could be amended by the dominion parliament without any consultation with the provinces. For instance, they deal with such matters as a quorum of the House of Commons, a quorum of the Senate, qualifications of Senators, and so on. We feel that that is not a matter of any concern to the provinces.

(b) Provisions concerning Fundamental Rights, e.g. Section 92 (Nos. 12, 13, 14). These are the clauses of Section 92 that deal with the administration of justice, the solemnization of marriage and property and civil rights in the provinces. We regard these as fundamental: Section 93, which deals with

education, Section 99, which deals with the tenure of office of judges and Section 133 which deals with languages also embody fundamental rights.

(c) Provisions concerning the dominion and some of the provinces. Examples are found in sections 69 to 80, 86, 87, 88, 94, 124 and 147.

(d) Provisions concerning the mutual relation of the dominion and all of the provinces. Examples are found in sections 21, 22, 28, 51, 51A, 90, 91, 92 (except Nos. 12 to 14), 95, 96, 101, 118, 121 and 125.

These four types of provision, we think, exhaust the sections indicating the complete character of the British North America Act.

VI. VARYING CONDITIONS OF AMENDMENT

I come now to the part of the brief entitled "Varying conditions of amendment." We say that the amendment of provisions falling within class (a) should be made by the dominion parliament, that is those provisions concerning the dominion only.

I referred a moment ago to the amendment of provisions falling within class (b), fundamental rights, and those should require the ratification of all the provincial legislatures.

As to the third type, that is the provisions concerning the dominion and some of the provinces, we believe that those should be effected with the ratification of the provincial legislature or legislatures concerned, and no other province. A good example of this is the lumber dues in the province of New Brunswick, which are provided by a certain section of the act. It seems to me that if the province of New Brunswick and the dominion agree to amend that provision, no other province should or could have any objection. We say that this third type of amendment could be made if the ratification of the provincial legislature or legislatures concerned were secured.

The amendment of provisions within class (d), concerning mutual relations of the dominion and all the provinces, presents serious problems. These provisions relate to matters affecting the dominion on the one hand, and all the provinces on the other hand, and largely embody the distribution of legislative jurisdiction which is the great characteristic of our federal system. They should not be capable of amendment by the dominion with the concurrence of a minority of provincial legislatures; for that would violate the federal principle. On the other hand they should be capable of amendment with something short of unanimous provincial concurrence. Otherwise our constitution would be practically unalterable as to many of its basic provisions, because of a virtual power of veto vested in each and every province. Moreover, the importance of this type of provision suggests that more than a simple voting majority in the houses of parliament should be required to initiate amendments thereof.

It is notable that other federal constitutions, as pointed out by the Premier of Ontario, are amendable by a stated majority of the central legislature and the concurrence of a stated majority of the other legislative organs.

Nova Scotia suggests as a working principle that two primary conditions should be fulfilled: (a) the passage of the proposed amendment in the Canadian parliament by an absolute majority of the members of each house; and (b) the ratification thereof by seven provincial legislatures.

VII—ALTERING THE PROVISION FOR AMENDMENT

I pass on to the seventh section of my submission which is headed, "Alteration of the provision for amendment."

The provision enabling constitutional amendment, when enacted, will constitute yet another class of provision in the constitution.

[Mr. Macdonald.]

Like other provisions it may itself require subsequent alteration, and the province recommends that there be included in the section embodying the agreed method of amendment, specific reference to the conditions under which that section of our constitution may be altered in the future.

The province suggests as a working principle that this section should be dealt with as falling within class (b) above, relating to fundamental rights, and its amendment should thus require the unanimous concurrence of the provincial legislatures.

VIII—DELEGATION OF POWERS

I shall now take up the last section of the submission which I call, "Delegation of legislative powers."

Though the conference is primarily concerned with the establishment of a permanent method for the formal amendment of the constitution the province recommends that the conference consider the desirability of a provision enabling temporary and partial amendments by way of authorized delegation of existing legislative powers by the dominion to one or more provinces, and vice versa.

Nova Scotia made this submission to the commission on dominion-provincial relations in 1938. Though the commission felt that constitutional amendment lay outside its terms of reference, it commended the idea as enabling desirable changes in the allocation of powers to be made in the case of individual provinces to suit necessities not so widespread as to require a constitutional amendment. The commission concluded that,

a general power of delegation for both the dominion and the provinces should provide a measure of flexibility which is much needed in our federal system.

It is extremely doubtful whether such delegation is permissible without constitutional amendment and the province believes that such a measure is sufficiently germane to the purposes of the conference—and sufficiently important—to warrant consideration.

Hon. JOHN B. MCNAIR (*Premier of New Brunswick*): Mr. Prime Minister, colleagues, and members of the conference: At the outset, may I associate myself with you, Mr. Prime Minister, and the others who have spoken in the references to the presence at this conference table for the first time of a representative of the new province, the name of which, in the interests of harmony and good understanding, I shall not attempt to pronounce until after Mr. Smallwood has spoken.

In the east, we have a special interest in the situation which we look upon as having resulted in the addition of a new member to that happy group of provinces known as the Maritimes.

This conference has been called to consider a method of amending the constitution in Canada. We who are taking part in it shall, if we attain this objective, have established another milestone in the march of our country toward the goal of full nationhood. But, in the view of the New Brunswick government, the proposed constitutional change does not go far enough.

Canada is recognized among the nations of the world as having, in every respect, the stature of a full-fledged independent nation. The declaration of the Imperial Conference of 1926 has received general acceptance within, and without, the empire. You will recall that it was therein stated that,

They (Great Britain and the Dominions), are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

I can see no danger for our federal system of government if we in Canada acknowledge the position universally accorded us by other nations. This will involve radical constitutional adjustments which, I submit, can be undertaken without risk to provincial autonomy. In fact, I feel that the position of the provinces can be immeasurably improved and their security made considerably more certain in the future by new constitutional arrangements.

In proposing this conference the Prime Minister of Canada, in his letter of September 14, 1949, stated in part as follows:

For some time the government has been giving consideration to devising a satisfactory means of removing the necessity, on every occasion on which an amendment to the British North America Act is required, of going through the form of having the amendment made by the parliament of the United Kingdom . . .

Before the recent election I stated on several occasions that it was the view of the government that a method should be worked out to amend our constitution in Canada and that any such method should include the fullest safeguards of provincial rights and jurisdiction, and of the use of the two official languages and of those other rights which are the sacred trust of our national partnership.

The government of New Brunswick is in full accord with the suggestion that a method should be worked out to amend our constitution in Canada. We feel very strongly that power to amend the constitution should be exercisable in Canada, and in Canada alone, not only for the reasons indicated in the Prime Minister's letter but also because in our view the present situation does not afford sufficient safeguards to the provinces.

We would go further however than the original proposal. We feel that the constitution itself should be domiciled in Canada; that so far as it has been, or can be, reduced to written form it should be a purely Canadian instrument, subject to no control outside this country. This view however is predicated upon the assumption that there should be adequate control within Canada.

In advancing this latter suggestion we have in mind the present insecurity of the provinces, and the need of protecting more adequately the rights, privileges, immunities and powers intended to be secured to them when our federal system of government was established in 1867.

In a Canadian Press dispatch from London, dated November 22, 1949, commenting on the debate in the House of Lords on the most recent bill to amend the British North America Act, Lord Addison, Lord Privy Seal, is reported as saying he was sure the house would be only too glad, and indeed, anxious to fall in with the wishes of the Canadian Parliament. The same dispatch reports Lord Salisbury, Leader of the Opposition, as saying that he entirely agreed with Lord Addison's views.

If the foregoing statements correctly reflect the attitude of the members of the Parliament of the United Kingdom, which appears to be altogether likely, the practical result is that the provinces in the final resort are not assured of any say whatever in amendments of the constitution, no matter how vitally their interests may be affected thereby. I believe that no one would be sanguine enough to suppose that the voices of the provinces would be heard at Westminster in protest against any amendment to the British North America Act proposed by the Canadian parliament. We might have within Canada the most widespread political controversy over the matter. If such should fail to impress our national legislators I conceive that the prospect of any protest having weight at Westminster would be most unlikely; in fact I believe the chances would be nil.

With these thoughts in mind I submit that the provinces, at this stage in our constitutional development face this situation. First, in the matter of

[Mr. McNair.]

constitutional amendments, the parliament of Canada is in effect the judge—and the sole judge—as to whether provincial rights and privileges will be affected. Second, in consequence the only protection the provinces have today against arbitrary invasion of their rights, powers and jurisdiction is the parliament of Canada itself. Third, it is not inconceivable that some Canadian parliament of the future might decide to request the parliament of the United Kingdom to amend the constitution in most vital particulars affecting the provinces and their autonomy, in utter defiance of them.

If the procedure of amending the constitution at Westminster at the instance of the parliament of Canada is continued, any proposed amendment emanating from the latter body would be enacted into law as a matter of course. We have very recent history to support us in the view advanced that great risks are inherent in our present arrangements. The last amendment to the British North America Act, which has already been referred to here, provides a striking illustration of the complete absence of sufficient safeguards for the provinces. Section 91 of the British North America Act, 1867 was just the other day amended, upon a joint address of the Senate and House of Commons of Canada without, so far as I am aware, prior consultation with any of the provinces. The relevant portion of Section 91 as so amended in 1949, reads as follows:

It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms in this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,—

1. The amendment from time to time of the constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, or as regards rights or privileges by this or any other constitutional Act granted or secured to the legislature or the government of a province or to any class of persons with respect to schools, or as regards the use of the English or the French language—

and so on. I think I will not read that portion which has to do with the holding of a session of parliament each year and an election every five years.

It will be noted that the effect of the amendment is to enlarge the exclusive authority of the parliament of Canada so as to permit it to amend the constitution of Canada—whatever that may mean—in all matters outside the scope of the exceptions as just read “Matters coming within the classes of subjects . . . assigned exclusively to the legislatures of the provinces,”—“rights or privileges . . . granted or secured to the legislature or the government of a province or to any class of persons with respect to schools or as regards the use of the English or French language” are included in the exceptions. No reference whatsoever is made to any right or privilege of a province, or of the people thereof, save in respect of schools and languages.

In this connection I refer, by way of illustration, to the rights and privileges in respect of lands, mines, minerals and royalties vested in provinces by Section 109 of the British North America Act, 1867; the rights or privileges of the people of the provinces in respect of the free interchange of goods between the provinces, as provided for in section 121 of the said Act; the office of Lieutenant

Governor as provided for in the said Act; and the representation of provinces in the Senate and House of Commons, as provided by the British North America Act, 1915.

The rights and privileges referred to in the examples just given were granted or secured to the provinces, or to their people, and not to the legislatures or governments of the provinces.

If this effect was contemplated (which I do not for a moment really suggest) for the amendment when it was sought, then we have evidence of a complete disregard by the parliament of Canada of the interests of the provinces in respect to the rights and privileges formerly granted or secured to them and to their people. If it was unintentional the situation illustrates the danger inherent in a procedure which, in effect, permits the parliament of Canada to constitute itself the sole judge as to whether provincial rights are to be affected without affording an opportunity for the provinces to be heard. In any event the situation should be remedied, and remedied without delay.

There has been much controversy in this country over the question as to whether the constitution is a pact. With all respect I am constrained to say that in my view the compact theory represents an obsolete approach to the subject. The question is not what the constitution may have been; rather it is what the constitution should be.

For reasons already indicated the present arrangements in my view afford no real protection to the provinces. We must face up realistically to the fact that so long as the constitution remains a legislative enactment of the parliament of the United Kingdom it will be amended at Westminster as a matter of routine at the request of the Canadian parliament. However well the compact theory may sound in political argument, it affords no real basis of protection for the provinces, in my view.

I submit that the constitution, which I suggest should be set up on Canadian foundations, should rest on a new agreement between the Dominion and the provinces and hereafter be supported on the basis of the sanctity or inviolability of contract.

To repeat, may I say that I am in full accord with the suggestion advanced by the Prime Minister that the power of amending the constitution should be within Canada. However, I feel that this proposal does not go far enough. I submit that the constitution itself should be domiciled in Canada. If I correctly interpreted the statement made to-day by my friend the Premier of Quebec, the government of that province holds somewhat similar views. If that is so I am happy to associate myself with him.

Further, it is evident that the present status of the constitution is as follows:

1. It remains an enactment of the parliament of the United Kingdom;
2. The power of amendment in respect of all matters, except those excluded by item 1 of section 91 of the British North America Act, as recently enacted and just read, is vested exclusively in the parliament of Canada;
3. The power of amending the constitution in respect of the matters excluded in the said item 1 of section 91 remains in the parliament of the United Kingdom, but its exercise is in practice subject to the direction of the Canadian parliament.

There is ample proof that the present attitude of the parliament of the United Kingdom is to comply with what it conceives to be the wishes of the Canadian people as expressed by the parliament of Canada. It is not inconceivable, however, that such an attitude could change. The political philosophy of the parliament of the United Kingdom could well, at some future time, not coincide with the political philosophy of this country. With political

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thinking in its present state of flux, fundamental changes in the political philosophy and outlook of a country can occur very quickly, either voluntarily or involuntarily. These are some of the reasons that impel me to advance the proposal that our constitution be domiciled in Canada, thereby shielding it against this potential hazard. The time for such a move is now opportune, in my view. Some occasion in the future may conceivably find us attempting such a change amid the heat and turmoil of an international crisis.

It has been suggested in some quarters that the constitution should be made an Act of the Parliament of Canada. With this I would most strongly disagree. In my view the constitution of Canada should not be within the unfettered control of the parliament of Canada or of any other legislative body. The constitution of Canada and the power of amendment thereof should rest on a deeper basis than the will of a single legislative body.

To evolve a new constitution free from the difficulties and hazards now prevailing, different methods of procedure may be open to us. At present the following method commends itself to me: the initial step would be a conference of representatives of the dominion and of the provinces to formulate a proposed new constitution. This present conference might itself well undertake this task. But since the drafting of a completely new constitution would probably require a very long period of time, the new constitution might well consist of the substance of the British North America Act, 1867, and other relevant statutes, with such necessary changes as might immediately be agreed upon, but in any event including a procedure for amendment thereof in Canada. I do feel, however, that the 1949 amendment to the British North America Act should be most carefully reviewed before being carried into Canada's proposed new constitution.

When agreement has been reached on the draft the dominion and the provinces would, in conference, determine the nature of appropriate legislation to be sought from the parliament of the United Kingdom to authorize and empower the dominion, the provinces and possibly the United Kingdom to enter into a treaty, after approval of the proposed new constitution by the parliament of Canada and the legislatures of the several provinces. The treaty contemplated would declare the proposed new constitution to be, and to become, the constitution of Canada on and after a day to be fixed in the treaty. The United Kingdom legislation would also provide that upon the coming into force of the new constitution, as provided in the treaty, the British North America Act, 1867, and certain other enactments of the parliament of the United Kingdom are repealed.

I am making no suggestions at this stage as to the procedural machinery that might be provided for the future amendment of the proposed new constitution. This is a matter which the government of my province would be glad to study if progress in these matters becomes possible.

In conclusion may I submit that, through the methods which have just been suggested, we may achieve for Canada a new constitution preserving and protecting our federal system of government as now constituted and functioning. These methods however require unanimous agreement on the part of the dominion and the provinces, otherwise there can be no treaty upon which the new constitution may be founded.

The new constitution as proposed, which would in a very true sense be a pact, would contain the provisions of the British North America Act, 1867, and other relevant United Kingdom legislation, or their substance, with such changes as in the course of negotiations might be readily agreed upon.

As has been already stated it would contain provisions for a procedure for its future amendment. The experience gained with the passage of time, might prove that this amending procedure should itself be amended. If so it would be within the power of the dominion and the provinces to change it. Any such change however in the amending procedure should of necessity require their unanimous consent.

It is realized that these proposals may not receive ready support. I submit, however, that they would meet in an adequate fashion a situation which is crying for a remedy, and that it is in the interest of all concerned—the dominion and the provinces alike—to adopt them if no better solution can be found. To my mind one thing is certain and that is that our present unsatisfactory constitutional arrangements should, in the interest of unity, harmony and good-will, be replaced by something better.

HON. DOUGLAS L. CAMPBELL (*Premier of Manitoba*): Mr. Prime Minister and honourable gentlemen: Let me begin my remarks by expressing my personal satisfaction and the satisfaction of the government of Manitoba that this meeting has been called.

This conference has met at the invitation of the federal government to endeavour to reach agreement on a new procedure for amending the Canadian constitution, so that in future, amendments to the constitution will be made within Canada itself.

With but minor exceptions, our constitution has stood unchanged from 1867 to the present day. But Canada has not stood still. Our growth in population, agriculture, industry and commerce has been great. Hence the problems of government in both the federal and provincial fields have been tremendously increased and rendered more complex. Changing conditions have brought new problems unthought of at the time of confederation and have sometimes brought radical changes in the character of problems for which provision was made in the B.N.A. Act.

Under these circumstances, in a country as vast and varied as ours, whose people have shown their capacity both to govern themselves internally and to take part effectively on the wider stage of world affairs, is it not fitting that the power to amend our own constitution should be exercisable by our own people within our own country? Surely, the obtaining of such power will simply mark one more milestone along the road in the building of the Canadian nation. If our respective governments are to fulfil their true function to the best advantage of our people we should have power to make such amendments to our constitution as may become necessary or desirable in order to clothe our central government with authority to meet its responsibilities fully within the national field and also to clothe our provincial governments with the powers necessary to fulfil effectively their responsibilities.

It is not my purpose, at this time, nor do I think this conference is the appropriate occasion, to discuss the changes in our constitution which may be necessary in the light of changed conditions. Manitoba believes, however, that the time has arrived when we should settle upon a method of procedure by which we in Canada can make such changes in our constitution as we may deem to be in the public interest.

That, as I understand it, is the purpose of the present gathering of representatives of the central government and the ten provinces of Canada.

I could recount many instances in which the government of Manitoba has co-operated with the federal government and the governments of other provinces in dealing with problems of mutual concern. I do not deem this necessary. I do, however, assure you that our attitude has not changed and that the government of Manitoba will give the same full co-operation in this matter as it has given in all other matters in which the relationship of the several governments was affected.

With regard to the question to be dealt with by this conference, the government of Manitoba, throughout the years has consistently taken the position that it was prepared to co-operate to the fullest extent in working out a procedure for amendment which would be acceptable to all, and which would

[Mr. McNair.]

safeguard to minorities, the rights which were preserved to them at the time of union. That is the spirit in which my colleagues and I have come to this conference.

This, as all of you know, is not the first conference of this kind, nor is it the first occasion on which a method for amendment has been the subject of study by public men.

The government of Manitoba has for a long time expressed the view that Canada should have, along with the other self-governing members of the Commonwealth, power to itself amend its constitution. In fact, this power has never been refused; the reason we do not have it is because we have been unable to agree upon a method.

I suggest that it hardly requires demonstration that Canadian citizens living in constant close contact with the conditions and circumstances of the Canadian scene, are better qualified than any other persons could possibly be, to determine at any moment what constitutional changes have become necessary or desirable.

Let me here re-state the position which was taken by Manitoba at the conference held in 1935. It was this:

1. The Parliament of the United Kingdom should no longer be retained as the instrument for effecting legislative amendments to the British North America Act, 1867; and

2. There should be established a procedure by which the British North America Act, 1867, may be amended under legislation enacted by the Parliament of Canada in which procedure, special provision should be made for safeguarding the existing rights of racial and religious minorities and legitimate provincial claims to autonomy.

In suggesting a procedure for amendment in conformity with these principles, the representatives from Manitoba did not present a detailed scheme but outlined a method which would satisfy these principles. Under this outline the British North America Act was divided under four heads:

- A. Provisions which did not affect the relationship between the Dominion and the Provinces.
- B. Provisions which affected one or more, but not all of the Provinces.
- C. Provisions which affected all the Provinces.
- D. Provisions which affected minorities.

It was suggested that:

- (a) In the case of the first group consent of the Provinces be not required.
- (b) In the case of the second group consent of the Provinces affected be required.
- (c) In the case of the third group consent of a majority of the Provinces be required.
- (d) In the case of the fourth group consent of all the Provinces be required.

It is of interest to note that a committee of officials of the central government and the provinces, which was set up by the then Minister of Justice pursuant to a resolution of the conference, in submitting a method for amendment, made the same general division of the provisions of the British North America Act as suggested by Manitoba's representatives.

In speaking to the House of Commons during the last Session of Parliament, the Prime Minister, the Rt. Hon. Mr. St. Laurent, gave the following as a summary of the method recommended by the committee of which I have just spoken:—

That in respect of matters concerning the central government only, amendments might be made by passing an Act of Parliament;

that in respect of matters concerning the central government and one or more but not all the Provinces, the amendment might be made by

an Act of Parliament and the assent of the legislative assemblies of each of the Provinces affected;

that in respect of a large number of matters concerning the central authority and all the Provinces, the amendment might be made by an Act of Parliament and the assent of the legislative assemblies in two-thirds of the Provinces representing at least fifty-five per cent of the population of Canada; but—

that there be a certain number of “entrenched clauses” which could not be dealt with except by an Act of Parliament and the assent of the legislative assemblies of all the Provinces.

It is our view that whatever method for amendment is to be adopted it should have incorporated in it some provision for securing the consent of the people of Canada; that consent being expressed either by elected representatives or by the people themselves. Some guidance in determining the form such consent is to take and the matters upon which consent is deemed necessary can be derived from a study of the procedures prevailing in other federations.

It is abundantly clear from the calling of this conference, the correspondence between the Prime Minister and the Premiers of the Provinces and the statements made in the House of Commons, that the central government believes that the doctrine of consent should be incorporated as a cardinal principle in any new method for amendment in matters which affect both the Federal and Provincial governments. With this, the government of Manitoba is in full accord.

It would appear that the deliberations of this conference will be expedited if we take advantage of the experience and example of other federations and of the very useful work which has been done heretofore in Canada. We do not suggest that the report of the committee appointed as a result of the last conference will be found to be completely acceptable. Changes have taken place since that report was drawn which preclude this. It is our suggestion, however, that that report could form a useful basis for the discussions at this conference.

Canada has attained full stature. She has taken her place as a world power. What we are, I suggest, chiefly concerned with, is to maintain Canada as a great and united country.

We are likewise concerned to see that the future development of our country shall not be restricted by anything in the nature of a constitutional strait-jacket but that, with due regard for the rights of the central government, the provinces and minorities, procedures shall be agreed upon by which constitutional changes may be secured with reasonable efficiency and despatch.

If those who drafted the constitutions of other federations could rely upon the good faith of one another, how much more should we who have lived in unity for so many years, be able to rely upon the trust and understanding of each other in formulating a method for amending our constitution.

It is in that spirit of mutual trust and understanding that we approach this matter. It is because of that spirit that my colleagues and I welcome the opportunity of sitting around the table with representatives of the Federal government and the governments of our sister Provinces, in an endeavour to formulate a method whereby we, in Canada, will, in future, have full control over our constitution.

The CHAIRMAN: Gentlemen: It has been usual at these conferences to arrange for an official photograph. There is an official photographer in the Railway Committee Room and, if it suits your convenience to proceed there immediately, he will take the photograph and that matter will be disposed of.

May I suggest, if it suits your convenience likewise, that we meet again at three o'clock in this chamber.

Conference adjourned at 12.45 to meet again at 3 o'clock.

[Mr. Campbell.]

AFTERNOON SESSION

The Conference resumed at 3.00 p.m.

The CHAIRMAN: We shall come to order and I shall call on the Premier of British Columbia.

Hon. BYRON I. JOHNSON (*Premier of British Columbia*): Mr. Chairman, may I first express my thanks on behalf of the government of British Columbia to you Mr. Prime Minister for your invitation to attend this conference.

As I look around this conference table, I am conscious of the fact that there are only a few here who were not in attendance at the last Dominion-Provincial Conference. One of those is the Premier of the Province of Newfoundland, and I would like to take this opportunity of expressing to Premier Smallwood sincere greetings and a warm welcome on behalf of the people of British Columbia and what a pleasure it is that our new province of Newfoundland is taking part in this historic meeting.

Apart from Mr. Smallwood I believe I am the only one who was not either directly or indirectly associated with the last conference.

Mr. Chairman, as I understand it from the exchange of correspondence, this meeting has been called to determine whether it is possible to reach agreement on a method of amending our constitution which will "relieve the United Kingdom Parliament of an embarrassing obligation and establish within Canada full and final responsibility for our national affairs" and one that is in accord with Canada's status as a fully autonomous nation.

I feel that as premier of British Columbia I express the view of our people when I say that as a sovereign nation we should be competent to govern our own affairs.

In assuming full nationhood, we also should assume all those responsibilities that go with such a status. It is, therefore, with assurance of general acceptance by the people of British Columbia, and most certainly with the full accord of the government of that province that I say we accept the principle that we should have power to amend our own constitution.

This is the simple question before us. Acceptance of that principle, however, creates a very difficult and complex problem to solve, namely the devising of a method by which we can achieve our purpose.

However, Mr. Chairman, I am certain that if we approach this task with a determination to find a common ground of agreement that will benefit the people of Canada as a whole we shall achieve our goal.

There are many matters of overlapping jurisdiction and many responsibilities that have completely changed in aspect since our constitution was first written. If we as a nation are to advance economically, socially and politically, then we must be in a position where we are free to clarify these issues in our own way.

Consequently, I think it can be generally agreed that the need for a more flexible method of changing our constitution exists.

It is my hope, Mr. Chairman, that out of this meeting there will evolve the outline or pattern of a method which can form the basis of discussion. I do not think I am alone when I say that we are hopeful that the Dominion representatives will perhaps have some suggestions to make along this line. It would seem to me that the formula which almost secured unanimous agreement in 1935 might well be taken as a starting point for seeking a new method.

Only by proposals, counter-proposals, careful study and modification to meet the varying situations throughout Canada can we hope to arrive at a method which will meet with full agreement here and of greater importance which will be acceptable to our respective legislatures.

Perhaps, Mr. Chairman, with the devising of a basis of discussion, those who are competently equipped to deal technically with constitutional matters can take this framework and build upon it so that at a later date we may return for a further conference to determine whether agreement can be reached.

I do not think it will be possible to devise a method without prolonged and careful study. In dealing with so important a matter as this I do not think we should proceed too hastily lest in doing so we defeat our purpose.

A great unifying force can come from a common agreement on the method of amending our constitution and British Columbia certainly intends to do all in its power to achieve this end and assist in making it possible for Canada to move forward and take her rightful place among the nations of the world and bring to her people an even greater measure of security and prosperity.

The CHAIRMAN: The Premier of Prince Edward Island.

Hon. J. WALTER JONES (*Premier of Prince Edward Island*): Mr. Prime Minister, Premiers and Delegates, I remember that in 1945, just four short years ago, when we sat around a table there were ten of us altogether, including the Prime Minister of Canada. Today four of them are not here. We have a new Prime Minister of Canada, a new Premier of Ontario, a new Premier of Manitoba, a new Premier of British Columbia, and now we have Newfoundland. The ancient colony of Newfoundland has entered Confederation, and has brought in its new dynamic Premier. He will be about the last speaker, and I have no doubt that he will have more ideas on this Constitution than probably any of the rest of us.

The purpose of this Conference as indicated by the invitation extended by the Prime Minister is to endeavour to work out a method of amending the Constitution which will be satisfactory to all the governments concerned both federal and provincial. To achieve unanimity on such a problem, involving as it does the future course of Dominion and Provincial constitutional relationships, will require most careful and judicious consideration of conflicting points of view, and bringing to this great task an attitude of toleration and compromise commensurate with the importance of the subject matter.

In all our discussions it must be apparent that the real problem is to work out a balance whereby the federation should not control the provinces, nor the provinces control the federation. The overriding consideration should be a proper integration of Canadian interests, consistent with probable revision of legislative powers. In other words our endeavour should be to preserve and strengthen the Union, not to destroy it.

As representatives of the government of the province of Prince Edward Island we are pleased to sit in with the representatives of the other provincial governments as well as that of the federal government with that end in view.

There would thus appear to be two primary assumptions: first that the present situation with regard to our constitutional position is unsatisfactory, and secondly that amendments of some fundamental nature are essential if this country is to enjoy within the framework of its federal political character all the privileges and rights belonging to a sovereign and autonomous state. Our present constitution, embodied as it is in the British North America Act 1867 and Amendments, was devised by the Fathers of Confederation as a method of uniting the then scattered and sparsely populated colonies of British North America, in the light of the existing geographic and economic conditions, under a Federal Constitution which was admirably fitted to provide a working arrangement between the constituent elements. That Act, as is well known,

[Mr. Johnson.]

was a Statute of the British Parliament, and any changes or amendments which might be deemed necessary to make, had to be sought through legislative enactments of that body.

With the gradual evolution of this country during the succeeding years from pioneer communities to that of a modern, sovereign state; with the growth and development of our economy and the attendant complexity and diversity of governmental action both external and internal, it is apparent that some revision of our constitutional position must be considered.

Whether we should continue as in the past to deal with each specific problem by requesting the British Parliament to pass amending legislation or to devise some acceptable method whereby necessary amendments may be adopted here in Canada, poses the question. The government of the province of Prince Edward Island is of the opinion that, since the Statute of Westminster, it appears inconsistent with our status of equality with other nations if we have not the right to amend our own constitution. It is further of the opinion that the power of amendment should be vested in the Parliament of Canada, subject to certain limitations where provincial rights are concerned and more specific limitations where fundamental rights are affected.

With the recent amendments to our Constitutional Act making the Supreme Court of Canada its final Court of Appeal; and providing that the Canadian Parliament has the power to amend the Constitution in respect of matters exclusively federal, some of the things, which might otherwise have been the subject of discussion at this Conference, would appear to be eliminated. But the constitution of the Supreme Court of Canada, being a Federal Court appointed by the Federal Government, would indicate that some limitation on the powers of the Federal Parliament to amend Section 101 of the British North America Act dealing with the Constitution of that Court should be provided. The government of the Province of Prince Edward Island feels that any amendment to this Section should not be made without the unanimous consent of all the provincial Legislatures.

The same considerations should apply to Section 121 for the free admittance of goods from one province to another and Section 117, dealing with provincial public property.

While it may be urged that provisions regarding the Senate are matters exclusively federal, and as such eliminated from consideration at this conference, yet we feel that any amendment to these provisions, whether to alter the basis of selection, or by making it an elective body, fixing an age limit or its abolition, if such be desired, should be participated in by the provinces, and a limitation placed on the federal parliament's power in that regard.

The government of this province is also convinced that the fundamental rights embodied in section 93, relating to education, and section 133 dealing with the use of English and French languages, or where minority rights are concerned, should not be subject to any power of amendment. Sections dealing with the geographic limits of the various provinces should not be altered without the unanimous consent of all the provinces. A similar safeguard should also be imposed on any power of amendment affecting sub-sections 12, 13 and 14 of section 92 dealing with the solemnization of marriage, property and civil rights, and the administration of justice in the province, respectively.

While sub-section 13 of section 92 has been placed in the field requiring unanimous consent of all the provinces, this should be subject to some exceptions, where majority consent alone should be sufficient. Dominion legislation interfering with property and civil rights within the province is not new. In all dominion specified powers, ancillary power to enforce and carry out those powers have necessarily interfered with provincial rights under sub-section 13 and have been held by the courts to be constitutionally valid.

It is suggested, in order to provide some flexibility to the constitution, that exceptions to sub-section 13 might include: Insurance; Company Law; and general social and economic legislation, involving public policy rather than private right.

This would leave, for example, the Quebec Civil Code, legislation dealing with private contractual rights, and provisions as to the holding and transfer of property unaffected by the exceptions.

Sections of the act dealing with the census, provincial representation in the House of Commons, the executive power both provincial and federal, the appointment, salaries and tenure of the provincial Superior Courts, agriculture and immigration, Oath of Allegiance, the admission of other colonies, and the remaining exclusive powers of provincial legislatures under section 92, would be the subject of amendment but only with the consent of a majority of the provinces.

Other sections of the act dealing specifically with a particular province should not be the subject of any power of amendment without the consent of that province alone.

In this category we place those settling the constitution of provincial legislatures, the right of Prince Edward Island to a minimum of four members in the House of Commons, and the particular and specific terms of the order-in-council admitting Prince Edward Island into the Union, except as to agreed variations.

In all matters it is suggested that a simple majority in all legislatures be accepted as sufficient to express the consent of the provinces concerned.

When agreement has been reached, and we are convinced it can be attained if the same spirit of co-operation and statesmanship is shown here as inspired the original founders of this confederation, then the approval of all the provincial legislatures should first be obtained, before the British parliament should be asked to amend the British North America Act in accordance with the formulæ for amendment here concluded. A further section should be inserted in the amending act stating that no alteration or change in the method of amendment shall be valid unless assented to by all the provinces.

The general views of the delegates representing the government of the province of Prince Edward Island as indicated here, are not intended to be the fixed and unalterable position of the province. They do, however, outline what, subject to such modifications as may be considered proper in the light of the deliberations and views expressed by the delegates from the other provinces and the dominion, we might be prepared to recommend for adoption by our provincial legislature.

Hon. T. C. DOUGLAS (*Premier of Saskatchewan*): Mr. Prime Minister and gentlemen: May I join with those who have preceded me in extending our thanks to you, sir, for convening this conference and in extending a welcome to the Premier of Newfoundland as he takes his place at this table for the first time in the history of Canada.

In taking its place at this conference, the Saskatchewan delegation is fully mindful of the historic nature of the occasion. We understand that it is a major purpose of this conference to strengthen the position of Canada as a self-governing nation, by transferring to our own political institutions, the power to amend the Canadian constitution. We realize, of course, that there may be some variance of opinion when the time comes to compare our ideas as to adequate amending machinery, with the ideas held by other provinces. Despite these possible differences as to method, we wish to assure you that we are in full accord with the basic principles involved. Canada has now come of age, and must assume all the functions of a nation state.

Saskatchewan is always glad of the opportunity of meeting with representatives of the federal government and the other provinces for a discussion of

[Mr. Jones.]

Canadian problems. We are of the opinion that many beneficial results would accrue from holding these conferences regularly. It is unfortunate that a conference of the federal government and the provinces has not been held since the adjournment of the conference on reconstruction in May, 1946.

We recognize that the Prime Minister, in calling this conference, limited its terms of reference to the establishment of a new technique of amending the Canadian constitution. Nevertheless, the Saskatchewan government is of the opinion that discussions regarding the procedure of amendment cannot be held in a vacuum. If we are to alter in any respect the machinery of government, we must first have clearly in mind the purpose for which that machinery exists.

The record of the province of Saskatchewan is clear on this point. In our introductory remarks to the dominion-provincial conference in 1945, we made the following statement:

In our view, the primary function of the government is to satisfy human needs and to advance the economic welfare of the people who are governed. That is the criterion which we have set ourselves. If the satisfying of human needs and the advancement of economic welfare means constitutional changes, then we are prepared to support constitutional changes. If the well-being of our people requires a fiscal rearrangement and re-allocations, then we are prepared to support such changes. We believe that the function of the government is not to be bound to any particular legislative authority. We do not consider any constitution to be sacrosanct. We believe our most sacred obligation is to care for the needs of the people whom we are privileged to represent...

Our opinion in this matter remains unaltered. We continue to believe that it is a fundamental obligation of society to secure to its individual members those basic rights and privileges necessary to the maintenance of human dignity and welfare. In Canada, this must of course include a guarantee of traditional minority rights. Our constitution, being a federal one, distributes powers between the various governments, and necessarily sets limits to the effectiveness of our governmental machinery in discharging these obligations.

In so far as this distribution has a detrimental effect, it is archaic and must be changed. If a change in the amending power is a prerequisite to any action to rectify this situation, we readily pledge to this conference our whole-hearted co-operation.

Believing as we do that constitutional changes must be related to definite social purpose, we come here in the hope of learning something of the problems that confront the other parts of Canada, and with the intention of placing before this conference the particular problems confronting the province of Saskatchewan. Unless we assess the problems and difficulties facing the various parts of Canada, we are not in a position to discuss intelligently the kind of amending procedure which will best suit the needs of the Canadian people.

We have no intention of dealing in detail with the plight of the Saskatchewan economy; it has been placed before previous conferences and is a matter of record. While our situation has improved in recent years, the wealth of our people still depends on two uncontrollable factors, uncertain climatic conditions and fluctuating world markets.

There are two popular misconceptions which must be cleared up at this point. It should be understood that Saskatchewan does not accept this conference as complying with our oft-repeated request for the reconvening of the dominion-provincial conference on reconstruction. At that time the federal government

offered to assume greatly increased responsibilities, particularly in the fields of unemployment assistance, old age pensions, health insurance and public investment.

While recognizing that this would not solve all the problems of the people of Canada, the Saskatchewan government considered that they constituted a major step towards maintaining full employment, and a high level of national income.

As a result of a breakdown of the conference on reconstruction, the provinces which signed the tax agreements with the dominion gave up the fields of revenue for which they were asked, but received none of the social security benefits which they were offered in 1945. The problems which these proposals were intended to solve, still remain. It is by no means certain that the provinces are today in any better position to discharge their increasing responsibilities than they were before the tax agreements were concluded.

While the Saskatchewan government is prepared to co-operate in every way possible in working out an amending procedure, we do not propose to be diverted from what is still the primary responsibility of government, namely, caring for the social and economic needs of our people.

Thus far, we have had little indication that the federal government proposes to come to grips with these problems in the immediate future. In the meantime, rightly or wrongly, the impression exists in the minds of many people, that this conference has been called to provide solutions to problems which even five years ago, the then Prime Minister of Canada urged upon us as being of paramount importance. Mr. King stated:

We must go forward to a better social order, a more reliable economic structure than we have ever had before. To achieve this will not be easy. It would be a fatal mistake to underestimate the seriousness of the task.

The second misconception which exists in some quarters is that the Green Book proposals of 1945 have been delayed because of the need for constitutional change. Far-reaching and important as those proposals were, no mention was at any time made of the need for, or the desirability of, constitutional amendment. Constitutional amendment was not then, nor to my knowledge has it been since held up as an impediment to the implementation of those proposals. Possible as those changes were then, so they remain possible now, with no new factors or considerations hindering their acceptance.

Our point is this, and we voice it strongly, that it would be most unfortunate if it were assumed, or if the impression were created in the public mind, that any reallocation of responsibilities must await the evolution of a new technique of amendment. It was for this reason that I wrote the Prime Minister, stating that it was the opinion of the Saskatchewan government that a reconvening of the dominion-provincial conference on reconstruction should have taken precedence over the conference we are now holding. We are still convinced that the social security proposals of 1945 could have been implemented, and still can be implemented, without waiting for the time when we shall have worked out a satisfactory amending procedure for the Canadian constitution.

Even though this conference has been called to discuss a procedure of amendment, nevertheless, the Saskatchewan representatives here will feel that this conference has been a failure unless we secure from the Prime Minister some statement regarding these broader and more fundamental issues. It is true that the Prime Minister has indicated that a dominion-provincial conference is to be called this fall. I think we ought to know more about the nature of that conference than merely the fact that there will be preliminary discussions about the tax agreements which expire in March, 1952. We want to know, first, do the Green Book proposals of 1945 still stand? Is the federal government prepared to assume its responsibilities with reference to the unemployed, old age pensions, health insurance, and public works for ameliorating unemployment?

[Mr. Douglas.]

Secondly, we want to know whether or not the federal government intends to delay its assumption of these responsibilities until all the provinces have signed tax rental agreements. In 1946, prior to signing the tax agreement, I asked the then Prime Minister in a telegram, whether the social security proposals would be implemented if seven provinces vacated the taxation fields requested. The Right Hon. W. L. Mackenzie King replied in a wire dated July 15, 1946:

The Dominion Government shares your regret that it has not been possible to include in the dominion offer made in the budget the earlier proposals relating to public investment and social security. However, as emphasized in the budget address, the public investment and social security proposals submitted last August, remain an essential part of the dominion government's program. As soon as there is sufficient acceptance of the proposed tax agreements, we shall be ready to explore in a general conference or otherwise, the possibility of working out mutually satisfactory arrangements in regard to the whole or any part of our earlier public investment and social security proposals.

We have never been able to determine what the federal government meant by a "sufficient acceptance". Does it mean all the provinces? Then, surely, they ought to state that they mean all the provinces. If it does not, then, surely, they ought to state how many constitute a sufficient number.

It is in the light of these important and overriding considerations that we turn now to discuss the more theoretical question of an amending technique. As we have already indicated, we welcome the action of the Prime Minister in his decision to initiate discussions that will give to the Canadian people full power to amend their own constitution.

It is necessary that some reference should be made to the action already taken by the Prime Minister and the Parliament of Canada, which has resulted in giving wide powers of amendment to the dominion. The interpretation that we place on the step already taken is simply that action had to be initiated by someone, in some form, but that the content of the amendment was not necessarily designed to be permanent. If this is the proper interpretation, then we concur in the action of parliament, and congratulate the Prime Minister on his initiative.

If, however, it is the thought of the Prime Minister and of the Dominion Government that the British North America (No. 2) Act, 1949, will permanently mark the area of unilateral action by the dominion parliament, then we wish to state quite definitely that it is unacceptable to us. We do not like it either in form or substance. We shall state our objections under several heads.

In the first place, the amendment in form gives the whole field of constitutional legislation to the dominion, subject to stated exceptions. These exceptions are fairly narrow and it seems obvious that procedurally the onus will be on a province if the action of the dominion parliament is to be challenged, no matter what type of amending legislation that parliament may choose to introduce and pass. With respect, we believe that this opens the field to centralization somewhat too abruptly if the essential nature of a federation is to be preserved.

Secondly, we question the fairness of the analogy that the Prime Minister drew between the recent amendment and the powers of the provinces to amend their constitutions under section 92(1). The power of a province under the above head is quite narrow. On the other hand, when we use the phrase "constitution of Canada" we are using language descriptive not only of the dominion parliament, but also of the provinces of which Canada is composed. The word "federal" likewise has a double use. It is used not only to describe dominion power, but also a type of union which necessarily embraces provinces, possessed of original powers, as well as a central government. There must be many matters in which the provinces are vitally interested but which do not

directly or legally concern them as legal entities. This whole area of government is given to the dominion parliament, and it is submitted that the provinces have a justifiable interest in some of the matters falling within this field.

Thirdly, the line of demarcation is left so indefinite by the amendment that we believe it is bound to produce unnecessary bickerings. In our opinion, there are many important matters left in doubt, as for instance the office of lieutenant governor. We believe this is unfortunate and undesirable. We believe that the area of unilateral control can be and should be clearly defined.

Several other defects should be noted.

- (1) The new amendment fails to guarantee representation by population in the House of Commons in accordance with sections 51 and 51 (a) of the British North America Act;
- (2) Provision should be made for easy reference to the courts by any province regarding the validity of legislation or proposed legislation;
- (3) In our opinion, serious attention should be given to the question whether the Senate should enjoy the power of veto over any future amendment of our constitution. With an appointed rather than an elected Senate, it is submitted that such a veto would be a guarantee only of freedom from progress.

Coming now to technique for dealing with matters not covered by the present federal amending power, our belief is that the constitution exists for the purpose of serving human needs and safeguarding human rights. There has been some reference at this conference to-day to the compact theory of confederation. The Saskatchewan representatives have repeatedly stated their opposition to the compact theory as a general proposition, but we have a great deal of sympathy for the considerations that motivate those who hold this point of view. We take it that they are concerned lest a constitution which can be too easily changed, should result in the loss of those minority rights and basic freedoms which we now enjoy. It seems to us that this difficulty can be overcome by having certain entrenched clauses which can only be changed with the consent of the House of Commons and every province of Canada. We believe that these entrenched clauses should include the existing protection afforded language, education, solemnization of marriage, the principle of representation by population, and the maximum length of the term of parliament. We would go even further and urge that the entrenched clauses should include a Bill of Rights, guaranteeing to every Canadian citizen freedom of worship, freedom from arbitrary arrest and imprisonment, and those other basic liberties which are fundamental to a free and democratic society. Having guaranteed certain minority rights and basic human freedoms against change without unanimous consent, we will then be in a position to deal more dispassionately with a more flexible procedure for amending those areas of the constitution which are of joint concern to the dominion and the provinces.

Apart from these fundamental rights to which I have already referred, we have never subscribed, nor do we now subscribe, to any theory which would demand unanimity of opinion as a prior condition for constitutional amendment. If this constitution is to be that of a democracy, then it must recognize the voice of the majority as the voice of the nation. We must insist that it shall be placed beyond the power of any minority to deny the validity of a decision reached by a majority of Canadians through democratic processes.

The tyranny of the majority is, of course, to be guarded against, and would be provided against, by the entrenched clauses. But the tyranny of the minority, exercised through any power of veto is to be not only guarded against, but is to be feared.

If political institutions are vehicles for social action, then the constitution is the roadway along which they must travel. In pursuing our deliberations, we

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must exercise the greatest care to ensure that we are making of it a broad highway, and not a dead-end street.

With this approach in mind, we recommend that amendments with respect to matters of joint dominion and provincial concern should be possible with the consent of a majority of the House of Commons and a majority of the provinces of Canada. In making this suggestion, we recognize that there are two principles which must be considered: that of population, and that of the recognition of the provinces as constitutional entities. We contend that a majority vote of the House of Commons takes care of the principle of population, and the assent of the majority of provinces adequately recognizes the provinces as constitutional entities.

These procedures will provide a means for amending every part of the Canadian constitution in Canada. Nevertheless, we must point out that this will still leave our basic constitutional documents what they are to-day, namely statutes enacted by the parliament of the United Kingdom. They are not Canadian statutes, and our constitution will not therefore be a truly Canadian constitution. The question remains whether we will be legally free from possible interference by the imperial parliament. We would submit that if one of the major purposes of this conference is to establish an unquestioned Canadian sovereignty, it will be necessary to take one further step. Consideration should be given to some method whereby the British North America Acts might be adopted as Canadian statutes. Perhaps at some time we Canadians will consider bringing together all these multitudinous statutory provisions into a single constitutional document.

So much for the techniques of amendment, but, in our opinion, there are things much more imperative than agreeing to a technique for the amendment of the constitution in Canada. We would strongly object to the postponement of essential amendments while we fritter away our time over the nature of the technique. We go further and urge that certain amendments should be made forthwith, either prior to, or concurrently with, the adoption of a technique for amending the constitution in Canada.

The first of these matters which we shall press for at this conference is the inclusion in the constitution of an explicit power of legislative delegation by a province to the dominion or by the dominion to a province. In keeping with the recommendations of the Rowell-Sirois Commission, we would suggest that such an amendment should cover both the power to delegate jurisdiction and the power to receive jurisdiction by delegation.

Over the life of confederation a number of techniques have been developed for effecting transfers of responsibility by process of agreement. The degree of formality required in consummating these agreements has varied from verbal understanding to legislative enactment. Many of these agreements have, in fact if not in law, altered and amended the strict word of the constitution. This process of amendment by agreement rather than by legislation has reached its high point in the existing tax rental agreements. Through them we have been able to take the first steps toward meeting problems of the national economy perceived but dimly, if at all, by the original framers of the constitution. Extension of this technique to other problem areas holds great promise of fruitful results.

Let me emphasize that we are not speaking of abdication, but of delegation. The proposal will introduce an element of elasticity into the constitution without taking any right from any province or from the dominion. It will afford a means of achieving results where the problems concerned are of interest only to a single province or region, and where time does not permit the processes of amendment to work themselves out in a formalized declaration of national interest.

Further, we believe that legislative delegation affords a useful means for testing action by results, which may be very important in affording evidence as

to whether there should be a permanent transfer of legislative jurisdiction from the dominion to the provinces or vice versa.

There is another field in which we believe the need for action to be so imperative as to demand immediate attention. In recent months we have watched with grave concern the decline of our position in foreign markets. Any further deterioration threatens to place the entire structure of Canadian primary industry in jeopardy. We believe the facts to be so obvious as to require no further elaboration. The solution to our dilemma, however, is not equally clear, nor, as we are well aware, is there unanimity of opinion as to where our salvation lies.

We would, however, submit that coping with the problem is rendered infinitely more difficult when we are faced with a jurisdictional conundrum such as exists in respect to marketing powers. In the words of the Rowell-Sirois report, this field "straddles the line between provincial and federal fields and falls in several aspects under the enumerated powers in both sections 91 and 92." It is true that in the case of certain staple crops a legislative framework for workable marketing policies has been evolved within present constitutional bounds. We assume that the Agricultural Products Marketing Act, 1949, represents an attempt to widen the limits within which effective marketing policies may be framed. Despite these considerations, we are convinced that legislation in this field must be unduly cumbersome and in large measure ineffective as long as constitutional uncertainty exists.

We would urge that immediate steps be taken to place in the hands of the federal parliament those powers necessary for the execution of an orderly marketing policy, at least with respect to those primary products most affected by conditions of foreign trade and commerce.

Thirdly, over ten years ago the Rowell-Sirois Commission, having studied the division of jurisdiction over labour matters, found it archaic and recommended basic transfers of responsibility from the provinces to the federal government. Lack of uniform legislation has seriously retarded the attainment of proper standards in the matters of wages, hours and conditions of work. As long as each province is faced with the prospect of jeopardizing its competitive position by taking the lead in improving these standards, this situation will remain.

Furthermore, with the extension of the basis of both industrial and labour organization to a nation-wide scale, the pressing need for a measure of federal authority in the field of certain industrial disputes has already presented itself. We would press for the passage of an amendment which would give the federal government at least concurrent power in the field of labour legislation.

Closely allied with this matter, because of the fate of the I.L.O. conventions, is the question of the power of the parliament of Canada to implement international treaties and conventions. We are on record as supporting at least in principle the steps which have been and are being taken toward the establishment of our status as a completely self-governing nation. One of the necessary steps is surely to repose within our central government the confidence and the power to act for us as a nation in our relationships with the world community. Here, indeed, the status and the prestige of a united Canada must take precedence over lesser sectional considerations. In so far as involves constitutional change, the government of Saskatchewan feels that the necessary amendments may properly be undertaken at this time.

Finally, I need scarcely remind this conference that the basic adjustment needed is the establishment of a more efficient balance between the responsibilities of and the financial means available to each of our jurisdictional authorities. This alone can secure a proper functioning of our federal system. While the revenues of all provinces have reached new high levels, legitimate extensions of public services and necessary long-range developmental programs are still

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beyond the realm of possibility in many parts of this dominion. Despite apparently buoyant revenues some provinces have been held in a squeeze as inexorable as any in the past, and the cost of shared programs initiated by the dominion has served to add to the over-all burden. We shall be prepared to discuss these matters in detail at the conference to be held next fall. Our future progress as a united, fully self-governing nation must lead inevitably to acceptance of the principle of fiscal need, so trenchantly presented by the Rowell-Sirois Report. Without yielding in our conviction on this point, however, we do feel justified in asking, as an interim measure, that in keeping with the dominion's proposal of 1945, a constitutional amendment be secured enabling the provinces to levy indirect sales taxes. Pending more basic adjustments this is at least a minimal measure; for the processes of government and the financing of its services cannot wait forever upon the unfolding of history.

Apart from these substantive amendments to the constitution, and apart also from the use of the power of legislative delegation which we have recommended, we believe that something further is required to make our federal system more effective. We believe that the Dominion-Provincial Conference with a permanent secretariat, should be a regular part of our governmental machinery.

Top-level conferences between the various governing authorities have a long, sporadic and largely undistinguished history in the annals of Canadian government. From an early date the need for regularizing such conferences has been suggested, but for some obscure reason, the idea that these conferences might be a mechanism essential to the successful functioning of Canadian government has received no wide acceptance. We believe this to be the opportune time for thoughtful examination of a technique which, in our opinion, is the only possible solution to certain perplexing problems which must otherwise remain as serious weaknesses in the fabric of Canadian government.

Had the practice of regular Dominion-Provincial Conferences been followed, the Canadian provinces would not have been subjected to the arbitrary procedures which have characterized certain policies of the Dominion government.

In the matter of marketing, the latest dominion legislation represents an abandonment by the federal government of its responsibilities with regard to international trade. Having failed to protect the Canadian producer in foreign markets, it has now thrust upon the provinces, without consultation, the responsibility which it has failed to discharge.

Without consultation with the provinces, it is vacating the field of rental control, after permitting substantial rent increases, and thus thrusting upon the provinces the responsibility of meeting a social crisis.

Without consultation with the provinces, it has announced a comprehensive irrigation scheme, which we now learn must be supported by substantial provincial contributions.

Without consultation with the provinces, it has announced the construction of a trans-Canada highway, and it is later found that the provinces will not only have to stand fifty per cent of the cost of construction, but also the entire cost of the right of way.

Without consultation with the provinces, it has decided upon a housing program for which every province must contribute twenty-five per cent of the cost, without regard to its ability to pay.

By these unilateral decisions, the federal government has embarrassed the provinces in respect to their capital programs and has virtually dictated policies to which their consent has not been obtained.

With the consultations which regular meetings of a Dominion-Provincial Conference would have provided, policies could have been better designed to enable Canadian governments each to meet their responsibilities.

Mr. Chairman, may I say in closing, that we in Saskatchewan are entirely in accord with the determination of the Prime Minister to make provision for the amendment of our Canadian constitution in Canada. We are at one with him in his desire to make of Canada a great nation, with political institutions adequate to the protection of the freedoms of the human beings living therein, and the satisfaction of their needs to the end that full lives may be lived and enjoyed. I can give assurance that our province will be most co-operative, and will agree to any proposals reasonably designed to achieve these ends.

But I must repeat that constitutional forms will not, of themselves, bring satisfaction to anyone. I would reiterate that a damaging blow would be dealt to the morale of the Canadian people if anything said or done here were to create the impression that this conference is considered a substitute for positive direct government action to solve the pressing problems now confronting the people of this dominion. There are nearly 300,000 unemployed in Canada; farm incomes are dropping, with farm operating costs increasing, and markets for farm products disappearing.

We suggest that farmers without markets, workers without jobs, and many other Canadians wrestling with economic problems, must not be led to believe that nothing can be done for them until a technique is worked out for a better B.N.A. Act.

Let it not be said of any of us that we fiddled while Rome burned.

The Hon. E. C. MANNING (*Premier of Alberta*): Mr. Prime Minister, fellow premiers, and delegates to the conference:

A practice that has very properly been followed by those who have already spoken has been to express not only to you, Mr. Prime Minister, our appreciation for having convened this conference, but to extend a cordial word of welcome to our new colleague at Dominion-Provincial conferences, Premier Smallwood of the province of Newfoundland.

Perhaps I might say that I have a particular reason for wishing to join in the welcome to Premier Smallwood. For a good number of years it has been my lot to have either the advantage or the disadvantage of being the last representative to speak at Dominion-Provincial conferences. I now pass that distinction on to him.

As I said, Mr. Prime Minister, the province of Alberta does appreciate your action in convening this conference to discuss the important matter that is before us at this time. I think we all agree that there are few matters of greater importance than those which relate to the constitutional rights and privileges of the Canadian people. The trend of world events, especially in recent years, has served to underscore the importance of such matters perhaps more forcibly than any words could do.

Speaking on behalf of the government of Alberta, I would like to say, Mr. Prime Minister, that we are in agreement with the proposal that a satisfactory formula should be devised to amend the constitution of Canada without reference to the parliament of the United Kingdom.

We are also in agreement with the proposal that the constitution of this country should, at the earliest possible date, become a purely Canadian document. I am in agreement with what Premier McNair said this morning—the constitution should be domiciled in Canada and should be subject to amendment in Canada. We feel that this is in keeping with Canada's status as a mature nation; we feel it is the viewpoint of the great majority of Canadian people; and we do not believe that it would in any way weaken the ties of the Dominion of Canada with the United Kingdom.

The specific matter for which this conference has been called, as we understand it, is to deal with the question of procedure in this matter of constitutional amendment. May I suggest that this question of procedure is primarily important

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because it is indirectly part of a much larger subject, namely the whole question of constitutional rights and powers as allocated between the dominion and the provincial governments of this country. It is our view that the question of procedure for constitutional amendment cannot and should not properly be divorced from the broader and larger matter of which we feel it is indirectly a part.

It was for this reason, you will recall, Mr. Prime Minister, that in correspondence between ourselves and your government, that we urged the deferment of the 1949 amendment passed at the last session of the House of Commons, until this round table discussion had taken place. We felt that there were implications in the 1949 amendment which certainly caused us serious concern and which, from some of the observations made at this gathering this morning, apparently caused equal concern to other provinces of this dominion.

In the Prime Minister's opening remarks this morning he pointed out that what has been called the British North America Act (No. 2, 1949) is designed, and I quote his words "to vest in the parliament of Canada authority to amend the constitution in its purely federal aspects."

Later, in summing up the present position with regard to amendment of the B.N.A. Act, the Prime Minister stated that: "in purely provincial matters amendments can be made in Canada by each provincial legislature, acting entirely on its own responsibility in accordance with Section 92 (1) of the British North America Act of 1867; and in purely federal matters, amendments can be made in Canada by the federal parliament, in accordance with the new section 91 (1)."

The 1949 amendment gives to the dominion parliament power to amend the constitution from time to time except in matters concerning, and may I quote them again even though they have been previously quoted:

(a) rights or privileges granted to provincial legislatures or governments of provinces;

(b) rights or privileges with respect to schools;

(c) use of the English or French language;

(d) the holding of a session of parliament every year and the holding of a general election every five years except in the case of war or apprehended war;

Finally, and I quote the words of the amendment:

(e) except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

I wish to call particular attention to that last section. Now, Mr. Prime Minister, many who have spoken on this question are men learned in law and, no doubt, constitutional law. I speak as a layman in so far as the question of law is concerned, but it seems to me that it requires a stretch of the imagination to suggest that this amendment simply puts the dominion in the same position, with respect to "purely federal matters", as that enjoyed by the provinces with respect to "purely provincial matters."

The difference between the provisions of the statutory amendment of 1949 and the statements made by the Prime Minister—both this morning and in correspondence—I think is vital and fundamental. Attention has already been drawn to that fact, and illustrations were given by several of the premiers, indicating the possible far reaching effects of the 1949 amendment. I would like to add one or two more which give us serious concern in this matter, and which were reasons why we felt this question of amendment, even in so far as it related to dominion powers, could not be and should not be divorced from the broad over-all question involved in a discussion of constitutional authority.

It is a well known fact that under the B.N.A. Act there are many fields of overlapping jurisdiction yet the 1949 amendment gives the dominion authority

to amend the constitution in all matters, with the limiting exceptions which I mentioned, and except where the provinces have been given exclusive jurisdiction.

Take as a matter of illustration the field of agriculture. This is a field in which both the Dominion and the provinces have, and still are exercising, authority. It is not a field in which the provinces have exclusive jurisdiction. Therefore it is not excluded by reason of the exemption contained in the 1949 Amendment. Under the 1949 Amendment the Dominion Government could amend the British North America Act in a manner that would impose responsibilities on the provinces in the field of agriculture that the provinces could not implement; or the Dominion could take away from the provinces completely any jurisdiction in the field of agriculture, if I am correct in my reading of the provisions of the Amendment. This same situation could well apply in the fields of public health, social services and in numerous other fields where the courts have held that both the provinces and the Dominion have jurisdiction.

Furthermore, I suggest there is another vital aspect to this question. Should any of the provinces, in exercising their legal constitutional rights referred to by the Prime Minister, enact some legislation that might be fully legal and constitutional, but which might meet with the disfavour of the Dominion authorities, the Dominion Government could disallow such legislation. In Alberta in the past we have had some experience with Dominion Government disallowance. But, on the other hand, should the Dominion Government enact an amendment to the British North America Act under the 1949 Amendment which should not meet with the favour of any of the provinces, the provinces have absolutely no recourse in the event that the courts hold that the wide powers contained in the 1949 Amendment empower the Dominion to enact the amendment in question.

I submit, gentlemen, that these are considerations which give to the 1949 Amendment seriousness and implications which require the most careful consideration of both Dominion and Provincial authorities and the Canadian people as a whole. I would go so far as to suggest in the matter of disallowance that in a broader discussion of this whole question consideration should at least be given to the question as to whether or not the right of disallowance and the right of withholding assent should not be abolished entirely, as a part of and in conjunction with the proposal to make the question of our Constitution a purely Canadian matter and divorced from any action on the part of the United Kingdom Government as well.

In the light of the points I have mentioned it seems to me evident that it is not correct to say the 1949 Amendment simply puts the Dominion with respect to purely federal matters in the same position enjoyed by the provinces with respect to purely provincial matters. I raise these questions not to oppose the laudable purpose for which the Conference has been called, but rather to emphasize how important it is that the Dominion Government should agree to submit to this Conference the whole question of the 1949 Amendment. I suggest the Dominion should do this not merely as a gesture of good faith but also for the purpose of providing that the procedure to be determined as the outcome of the deliberations of this Conference should also apply to amendments which may be made by virtue of the 1949 Amendment. In other words, we do not think that that amendment and its possible effects should be divorced from the application of whatever principles we may agree to at this conference on the question of future amendments.

In the matter of basic principles that should be followed in our opinion in the making of constitutional amendments I find myself in very substantial agreement with what was expressed this morning by the Premier of the Province of Nova Scotia, Mr. Macdonald, and also what was said this morning by the Premier of New Brunswick, Mr. McNair.

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There are undoubtedly some matters which can properly be regarded as of concern to the Dominion Parliament alone. In these cases it seems to us there should be no valid objection to the Dominion Parliament having exclusive power in the matter of amendments. There are other matters where, as I have already pointed out, the interest of the Dominion and perhaps only one other province might be involved. In those cases it would seem to us that provinces whose interests are in no way involved should have no valid objection to a mutually satisfactory arrangement being worked out with the consent of the Dominion Government and the province concerned.

In more important matters we agree with the principle that certain amendments to the constitution should come about only by enactment in Parliament, by an absolute majority of each House, and also with the ratification of say at least two-thirds of the provinces of Canada. There are still other matters which, as has already been suggested, are so important to the people of this country as a whole that amendments in matters touching on these subjects should be made only with the consent of the Dominion Parliament and with the approval of all of the provincial legislatures.

On this point, Mr. Prime Minister, I would like to suggest that while the idea of a referendum is not perhaps generally regarded as a desirable or practical method of dealing with issues of this kind, it should not be eliminated from our consideration, certainly at this stage. We should not eliminate any consideration of the use of the referendum at some point in the discussion of constitutional matters. We know it is employed in the United States of America. It is employed in Australia, and I believe it is employed in New Zealand. While it certainly has drawbacks and weaknesses in various detailed matters I do suggest that we should leave our minds open to consideration of a reference to the Canadian people of perhaps some of the most fundamental rights that might ultimately be embodied in a revision of the Canadian Constitution.

In closing, Mr. Chairman, may I touch on the broader matter of the need for the redrafting of the Canadian Constitution in its entirety. I have already said that in our view not only should provision be made for amendment to the Constitution be within this country, but that the Canadian Constitution should become a purely Canadian document as quickly as possible. We should not lose sight of the fact that the people of Canada as a whole have never yet in their history had an opportunity of adopting and ratifying a constitution of their own. We believe a fundamental reason for steps being taken to bring about a proper redrafting of the Canadian Constitution is the obvious need that exists today for clarification of the constitutional responsibilities as between the Dominion Government and the Provinces of Canada.

I think we would all agree that if it was decided upon to proceed to the goal of redrafting the Constitution, certainly the British North America Act and the other Statutes of the United Kingdom Parliament that relate to the constitutional powers of this country obviously would be the basis and framework of that Constitution. But over the years there has grown up an ever-increasing need for greater clarification of the responsibilities in the constitutional field between the dominion and the provincial authorities. It is also our view that there is need—I am not advancing any specific matters at this stage, but we do feel definitely that there is need of a full examination being made into the advisability of changes or modifications in the present allocation of constitutional powers as between the Dominion and the Provincial spheres.

Certainly, a constitution, to be acceptable to the people, must clearly state what advantages it should accord to the people. Above all else it should be practical. Wherever through experience we find that there are constitutional provisions which render impracticable the proper discharge of responsibilities assigned to the respective spheres of government then I think surely we would all agree that this situation should be corrected. By way of illustration I refer

again to what was mentioned this morning by the Premier of the Province of Quebec, namely, the field of fiscal policy, which is perhaps the outstanding example. I think it will be admitted by all of us that there is little practical value in a right or a constitutional power being assigned to a legislature if the wherewithal to discharge its responsibility under that provision is not also provided along with the responsibility.

I suggest, Mr. Prime Minister, that there is need in that field for a review of the whole question of the allocation of constitutional powers to the end that anything that is impracticable should be eliminated.

In that regard there is also the question of matters that while, from the constitutional standpoint, they come within the sphere of say the Dominion Government, yet in their effect they have a direct bearing upon the economy of the provinces. By way of illustration I might mention immigration, a matter which is under the jurisdiction of the Government of Canada. Yet whatever policy the senior government puts into effect, when immigrants come into the country, they settle in some part of Canada where, under our Constitution, they become the responsibility of the provincial and municipal authorities in the matter of education, social services and so on. These are practical problems which I feel are deserving of full analysis, and if necessary a re-alignment of constitutional power to eliminate any impracticable situations which exist.

As a procedure in dealing with this matter I would suggest two things. First of all I feel that the Dominion Government should agree to open this Conference to a full and frank discussion of matters pertaining to the question of Constitutional Amendments rather than restrict it, if such is the intention, entirely to the matter of procedure for bringing about Constitutional Amendments.

The second thing I would suggest is that we as a Conference, if possible, should agree on the basic principle that a formula should be devised to make possible amendments of our Constitution within Canada, and that the Constitution should be converted into a Canadian document, to be adopted and ratified by the Canadian people in some mutually acceptable manner at the earliest practicable date.

If, Mr. Prime Minister and gentlemen, we can agree on these basic principles, I think we should surely then be in position to work out a plan of procedure which would ultimately bring us to the goal towards which we have been striving.

Hon. J. R. SMALLWOOD (*Premier of Newfoundland*): Mr. Prime Minister and gentlemen: It is my pleasant and happy duty to acknowledge, with deep gratitude, the words of gracious and kindly welcome extended to the new province of Newfoundland by you, and by the premiers of the provinces. It is also a happy duty to convey to you, sir, on behalf of the people of Newfoundland, as I know I do, their loyalty and greetings to you as Prime Minister of this Canadian nation, and to convey to the premiers of the nine older provinces their salutation as fellow-Canadians.

In Newfoundland, I think we have a particular kinship with the people in the province of Quebec, which is contiguous to Newfoundland; with Nova Scotia, removed from us by a mere ninety miles of water; with Prince Edward Island, because she, too, is an island; with New Brunswick, because she is the other of the four Atlantic maritime provinces. I think I can go farther and say that includes British Columbia as well, for which we have a particular regard, because she is another maritime seaboard province and the farthest away from us—but not for that reason; for Ontario, because so many of our Newfoundland people have taken up residence there; for the prairie provinces, because they have, for many years in our Newfoundland history, provided our bread.

I think I can report to this conference that, narrow though the majority for union with Canada was in the referendum held a year and a half ago, today

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the sentiment of the Newfoundland people for union with Canada is universal and all but unanimous. To resolve the question of how the name of my province is pronounced, I have only to confirm what Premier Jones has said, that it is Newfoundland, and more or less rhymes with understand. Virtually all the emphasis is on the last syllable, the second being a short F apostrophe N, and scarcely pronounced at all.

Now, Mr. Prime Minister, about a year and a half ago, we in Newfoundland ended a period of about three years during which one great preoccupation of all of us was a constitutional matter. An election was held to elect a national convention of forty-five representatives of the island, who for a year and a half met almost daily to wrestle with the question of the future constitutional status of Newfoundland. During that year and a half, a delegation of the convention was allocated to go to London to consult with the government of the United Kingdom. Another delegation was sent to Ottawa to consult with the government of Canada.

The convention itself was followed by the holding of a national referendum, again on the question of the constitution of Newfoundland. Some nine months ago, the matter was more or less fought out again during the general election. Therefore, technically ending nine months ago but certainly not more than a year and a half ago, we in Newfoundland have spent from three to three and a half years virtually doing nothing else but considering constitutional problems, only to find that now we are a province we are once more considering constitutional problems. Frankly, we had not given the matter a solitary thought until approximately eleven o'clock this morning, when the photographers had finished and the Prime Minister had begun his speech. Equally frankly we do not expect to be able to give much, if any, thought to this problem on which this conference is called for eight, ten or maybe fifteen months to come, because we are still wrestling with the problems which arise from the readjustment of Newfoundland to the status of a province of Canada. We are still wrestling with the problem of the necessary contract or tax rental agreement. As yet we have not been able to complete a formal document covering the tax rental agreements. How then can it be expected that Newfoundland could have given any profound thought to this weighty matter which is engaging the attention of this conference?

Only this can be said, and I speak for my colleagues who are here as well as for the government of Newfoundland, that we are just a little shocked to find that we have abandoned our ancient, and we think honourable, isolation to join this Canadian nation to find that it has not a constitution of its own, but one that was given to it by the parliament of the United Kingdom. Only in recent weeks did the parliament of Canada acquire the right to amend that constitution in particulars affecting the federal field. With even more shock did we learn today—if we did not exactly learn it, we had the matter brought forcibly to our attention by the premier of New Brunswick—that the federal parliament has at this moment the right to request the parliament of the United Kingdom to amend the constitution in matters affecting the provincial field.

We want to be exceedingly proud of Canada. We want to feel that Canada is not merely the third largest land body on the globe, but one of the great nations; great in heart, in mind and in spirit; one of the great peoples of the world. We want to be proud of Canada because we, in Newfoundland, are proud of ourselves. We are proud of our own history and of our own traditions. We want to merge these with those of Canada as a whole, and we want Canada to at least be a country with a constitution of her own, and with the right to amend it as it seems just and proper from time to time to do so.

We feel, but only since eleven o'clock today, that something ought to be done that will remove from the parliament of Canada the right, which it might perhaps never exercise but which it apparently possesses, to change the constitution in matters affecting the provinces without the permission of the provinces. For

example, in Newfoundland we have a system of education which is rather different from that of any other province. We want to be very sure that that system remains. We do not want it to be within the power of the parliament of Canada to change it without the consent of the province of Newfoundland. If necessary, we desire the province to have the right of absolute veto over any proposed change in that matter by the parliament of Canada, provided always that these minority rights—for Newfoundland the main one is the system of education—are safeguarded.

My colleagues and I have met since the recess, and we feel we must agree with all who have spoken so far that Canada ought to have her own constitution. It ought to be a Canadian document, and there ought to be the right to amend it within Canada, while still preserving these minority rights. Finally, Mr. Prime Minister, if the birth of a new, or even the rebirth of the old Canadian unity, signs of which seem to us to be evident in this conference, should happen to coincide with the appearance for the first time of the Newfoundland representatives at what is the first all-Canada conference, then I can assure you that the Newfoundland delegates, the Newfoundland government and the people of Newfoundland will be happy indeed.

Right Hon. L. S. ST. LAURENT: Well, gentlemen, I think we have had some very interesting general statements about the problem which confronts us.

It seems there is general agreement that there are certain fundamentals which must be absolutely protected and with respect to which nothing less than the concurrent action of the parliament of Canada and all the legislatures should be required in order to bring about amendment. There seems to be general recognition that there are some things which are purely federal, with regard to which action by the parliament of Canada should be sufficient.

Some concern has been expressed as to whether the language used in the 1949 No. 2 Act could not be subject to interpretations which might extend it to things that would not be purely federal; and that if we are going to examine our whole problem it should be examined in such a way as to dispose of that concern.

I do not raise any objection to that. If we are examining the whole field I do not think we would wish to say, "Well, now, there has been something enacted which is an obstacle to doing now what would contribute to the creation of a feeling of confidence on the part of the Canadian people that we all mean to do the right thing by each other."

Then there are certain matters which have been referred to as of concern to the federal authority and to one or more provinces, with which it should be possible to deal by the concurrent action of the federal parliament and the legislatures of the one or more provinces interested, without having to go to other provinces. There again I think we can make very substantial progress in limiting these fields.

Then there would be another and perhaps more important area of the constitution—I mean from a controversial viewpoint—where there should be the possibility of making amendments in Canada but where it should not be the right of the parliament of Canada to do it alone, where there should be some participation by provincial legislatures. On those general principles I think we find ourselves very much in agreement.

I am sure we would all like to see the text of the addresses delivered to-day. We all listened very attentively, but I know we would all want to see the actual language used, together with its implications. So may we not hope that by giving consideration overnight to what has been said to-day we may come back tomorrow morning and hope for some further progress toward a measure of substantial agreement in the line of our ultimate objective?

[Mr. Smallwood.]

I should like to say just this one thing further. I would not want anyone to feel that we were going to try to invoke the fact that the 1949 No. 2 amendment has been made as an obstacle to the doing, in an over-all way, of something which would help create that feeling of confidence which I think it is the hope of us all to give the people to whom we are responsible. I think they want this to continue to be in essence the kind of nation it has been, with a division of sovereign powers as between the central authority and the legislatures, which in their spheres also exercise sovereign powers.

I would suggest that we meet at half-past ten in the morning, if that is agreeable, and that we adjourn now. At that time we shall extend the table so that our colleagues, who have an equally great interest in these proceedings, may sit with us.

As to whether or not we should meet in camera, of course I do not want to be arbitrary in any way but whenever we have had meetings in camera there have been some who felt that we were not too proud of what we were doing. If we can get along as well during the rest of this conference as we did to-day I think we will all have reason to be proud of what we are doing, and it might be as well to let the public see how we are behaving. There may be some details that will have to be worked out in smaller groups, smaller committees, but in attempting to establish the general principles I think we might continue our plenary session in public, for at least to-morrow morning.

Mr. CAMPBELL: I am sure we would all like to see the texts of the addresses that have been made today. Is there a procedure by which they will be distributed to us?

The CHAIRMAN: We shall see that this is done.

Mr. DOUGLAS: *Hansard* will be available in the morning, will it not?

The CHAIRMAN: I know I would like to get those texts this evening, and if they can be made available to me I will ask that arrangements be made to see that you gentlemen also get them. Premier McNair suggests that instead of half-past ten we do not meet until eleven, so we may have time to see such texts as we do not receive this evening. If that is agreeable this conference will stand adjourned until eleven o'clock tomorrow morning.

At 4.35 p.m. the conference adjourned.

CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

SECOND SESSION, WEDNESDAY, January 11, 1950

MORNING SESSION

The conference convened at 11.05 a.m., Right Hon. L. S. St. Laurent in the Chair.

Right Hon. L. S. ST. LAURENT (*Prime Minister*): Gentlemen we shall come to order.

Before the proceedings go farther I wish to say that it is my understanding and I venture to assume that it is the understanding of all of us, that we do not regard this conference as being a legislative body which will make binding decisions. Our purpose is to agree among ourselves on proposals which we can recommend to our governments and through them to the legislative bodies to which we are responsible. It is those legislative bodies that will have the final responsibility of decision.

As I stated in yesterday's proceedings, we are all agreed upon one principle, namely that it would be desirable to reach agreement so that the next application to the parliament of the United Kingdom will be final. It will follow from that assumption that any agreement upon that specific proposal would be understood to be contingent upon achievement of general agreement. In other words there would be no desire to consider agreement on any one proposal as being something agreed upon for separate implementation.

I think, if we are agreed on that statement of the situation, it will be easier for us to dispose of concrete proposals separately, passing from one to another, it being understood that they will all form part of the general agreement and not be separate proposals for separate implementation.

Should we not then make progress if we begin to consider the specific proposals at this time? As I stated yesterday, and the words appear at page 14 of the mimeographed report, the federal government does not intend to submit specific proposals because it seems obvious that the federal parliament would have some part in any appropriate amending procedure that might be agreed upon. I added the view that the representatives of each of the provinces should put forward their views as to the most appropriate form of procedure. It is our hope that in so doing we may be able to reconcile the various proposals.

I understood from what Mr. Frost said yesterday, and he is reported at page 24 of the proceedings, that Ontario is prepared to consider any proposals advanced by any governments here. Mr. Frost went on to say: "We are prepared ourselves to advance proposals, not in a dogmatic way but as a basis only for discussion and consideration."

If it is convenient to Mr. Frost I would ask him at this time to put forward his proposals so that we may consider them.

Hon. LESLIE M. FROST (*Premier of Ontario*): Mr. Prime Minister and gentlemen: Perhaps I should elaborate a little on what I said yesterday. We from Ontario are here to contribute ideas to the pool of ideas brought forward to this table. We recognize the fact that the machinery which is finally arrived at will not be the proposal of one government or one person but it will be the result of ideas that will be advanced by all of the representatives who are here.

I may say that yesterday my colleagues and I were very much interested in certain proposals which were advanced by other governments. I felt that the Prime Minister himself contributed immeasurably to the solution of the problem with which we are faced in the statement that he made yesterday relevant to the Act of 1949, and his willingness and the willingness of his government that the subject matter of that Act should be considered here and that it should be subject to the machinery, if I may put it that way, which will come out of the conference.

I also said that my colleagues and myself are not desirous of putting before the conference what might be termed "Ontario proposals". Actually what we are placing before the conference are suggestions for consideration. These suggestions can be incorporated in whole or in part, or they may not be incorporated at all, in what this conference may finally determine. I have purposely made in this draft amendment suggestions for discussion regarding amending procedure. In no way are they to be regarded as being conditions which our province advances. They are not even proposals; they are just subject matter for discussion.

The suggestions that we make are these:

1. With the consent of the legislatures of all provinces the parliament of Canada may amend the Act with respect to,—
 - (a) The use of the English or the French language
 - (b) Education
 - (c) Rights or privileges granted or secured to any class of persons with respect to schools
 - (d) The legislative jurisdiction of the provincial legislatures.

I am conscious of the fact that this includes all of Section 92. In relation to these matters we offer suggestions for discussion, and we say that there should be absolute agreement upon the part of all the provinces and the parliament of Canada in relation to these matters.

Our other suggestions are:

2. The parliament of Canada may amend the Act in so far as it relates to one or more but not all of the provinces with the consent of the legislature of the province to which it relates.
3. The parliament of Canada may amend the Act in respect of all matters concerning the executive government of Canada and the constitution and privileges of the House of Commons and the Senate except with respect to the representation of the provinces in the House of Commons and the Senate.
4. With the consent of not less than two-thirds of the legislatures of the provinces the parliament of Canada may amend any other provision of the Act.

In other words, except in the case of (1), (2) and (3) any other amendment may be made by the parliament of Canada if it is confirmed by two-thirds of the legislatures of the provinces.

[Mr. St. Laurent.]

I must say that these suggestions are by no means what we consider to be the last word. We feel that other suggestions will be made here which may strengthen them.

HON. MAURICE L. DUPLESSIS (*Premier of Quebec*): The Prime Minister has said that we should not regard this conference as being a legislative body which will make binding decisions. He said that the proposals that we agree upon should be submitted to the decision of the respective legislatures. We have always been of that opinion. As a matter of fact, for many consecutive years, at the legislature of Quebec, I myself have introduced legislation which was unanimously accepted, and by which the position of Quebec was clearly established. This legislation stated most clearly that no definite decision could be arrived at until and unless it was approved by the legislature of Quebec.

The second remark of the Prime Minister was very important. Let us speak very frankly. It was the remark of a clever lawyer. Being a lawyer myself I think that the position of Quebec should be clearly established. Mr. St. Laurent said it should be understood from the beginning that the proposals of Ottawa would have to be considered as an entity and that possible amendments should be considered as a whole. I do not agree with that. I think we should exchange our views frankly. As Mr. Frost said, we should pool our views, take the best of them and try and arrive at a definite settlement which will clear the way of misunderstanding and establish once and for all a real Canadian constitution, decided upon in Canada, for Canadians and by Canadians, and taking into consideration, as fundamental principles, the essential autonomy of the provinces in the legislative and administrative field, and also fiscal powers, which are a necessary accessory to the exercise of legislative and administrative powers.

So far as Quebec is concerned we have an open mind. We have firm convictions that cannot be changed, because they are based on fundamental principles which I stated yesterday in a brief way. But we have an open mind as to the ways and means to amend the constitution, to establish in Canada a real Canadian constitution. We are willing to listen and we shall listen to other proposals from other provinces. We are ready to pool our knowledge and our desire for a great Canada based on a federal system respectful of the rights of the central authority and of the provincial authorities.

HON. ANGUS L. MACDONALD (*Premier of Nova Scotia*): Prime Minister and Gentlemen, I was very glad to hear the Premier of Quebec and the Premier of Ontario refer to their desire to make contributions to what they called a common pool of knowledge and understanding in this conference. It seems to me that certain matters have emerged from yesterday's discussions. I take it that one is that there is a considerable body of opinion, perhaps I should say unanimous opinion, in favour of the principle of an amending procedure.

I should go on to say of course that the application of this procedure will vary according to the particular type of provision of the British North America Act that is being dealt with. In order to determine how many of the governments are of this opinion the Nova Scotian delegation has prepared an outline of an enabling section to be added to the British North America Act. I hasten again to express my agreement with Mr. Frost in the view that no province should endeavour to put forward a certain proposal as an Ontario proposal or a Nova Scotia proposal or a Quebec proposal; but it does seem to me that if this rough draft which I have, and which is merely the framework of a section, could be taken and studied, amended, of course, as I am sure it will be in many respects, it will nevertheless at any rate give a direction for us to follow. Just how far and how fast we should travel along that road will be for the conference to say.

The section is based largely on what I said yesterday, namely, that all sections of the British North America Act cannot be treated with the same importance because some of them deal with matters that are of much greater consequence to Canada, to the provinces and to the people, than others. This section of mine is not to be taken so much as a draft in a legal form, but rather as the framework of a section which might in time ripen into a finished product in the hands of a skilled draftsman. Since it is designed to invoke opinion and possible agreement as to the machinery to be followed, it has been simplified by referring to the British North America Act of 1867 as if it were the sole constitutional document. I venture to state, Prime Minister, that if the various representatives here could agree upon this skeleton section as embodying the desirable principles to be followed with regard to this or that type of provision in the British North America Act then the conference would have taken a long step in the desired direction.

I have twelve or fifteen drafts which I shall pass around to each delegation. It will be noted, gentlemen, that there is a separate clause for each type of amendment which I mentioned yesterday. The nature of the amendment is indicated by parentheses after each clause. For the sake of illustration each clause specifies some section to be amended therein; but there is no thought in our minds in Nova Scotia of asking the conference in the first instance to agree upon the sections so specified. If the framework of amendment should merit adoption in principle then this conference, or a committee of the conference, could determine what sections of the constitution should be specified in the respective clauses which embody the different types of procedure to be followed.

Now, the draft section which I propose would be known as section 148 and would read as follows:

The British North America Act, 1867, is hereby amended by adding thereto the following section: 148 (1) The several sections of this act may be amended or repealed from time to time as follows: (a) As to sections 23, 24, 30 and 36—those are the sections that relate to the constitutional privileges of the executive government of Canada and of the parliament of Canada—by act of the parliament of Canada. I am speaking now of the executive government of Canada; I am not speaking of anything wider than that.

As you know, section 23 relates to the qualifications of Senators. They must be thirty years of age, have \$4,000 worth of property and must be natural-born subjects or naturalized, etc.

Section 24 states that the governor-general may summon persons to the Senate.

Sections 30 to 36 state that Senators may resign, and so forth. I think there would be no objection to that. The place of a Senator may become vacant under certain circumstances, and when a vacancy arises the governor-general can summon any fit person. We only bring these sections forward by way of illustration, and there may be others that should be added to the list, while some of these might be dropped. We do say, however, that there are certain sections of the British North America Act, the amendment of which we would be quite content to leave to the parliament of Canada alone.

Section 148 (1) (b) would read as follows:

(b) As to sections 69 to 80, 86, 87, 88, 94, 124, 147—

These are sections that relate to Canada and one or some of the provinces, but not to all. As to those sections we say they should be amended by act of the parliament of Canada upon request or with the subsequent confirmation of the legislature or legislatures of the province or provinces concerned.

[Mr. Macdonald.]

Sections 69 to 80 deal with the legislative power of Ontario and Quebec. As to that we say that if the province of Quebec wishes to make some amendment to these sections—if any are now applicable and I do not know how many are—then the province of Nova Scotia or the province of Manitoba or any other province would have no interest in that matter. These are sections that could be amended by the province of Quebec or the province of Ontario, as the case may be, acting with the dominion parliament.

MR. ST. LAURENT: With the possible exception of the position of lieutenant governor, are not those sections matters with which the legislatures themselves could deal, without any intervention from the dominion parliament?

MR. MACDONALD: I think that is probably so, and perhaps in any redraft those sections could be omitted.

MR. DUPLESSIS: In Quebec we have certain clauses which cannot be modified.

MR. ST. LAURENT: There is no requirement with respect to the parliament of Canada?

MR. MACDONALD: As the Prime Minister says, that is probably a matter with which Quebec can deal in any case.

Let me take section 124, which I mentioned yesterday, concerning the right of New Brunswick to levy lumber dues. It seems to me that is a typical section to illustrate what I have in mind. I do not know whether New Brunswick still operates under this section, but if it does and a change were desired then I do not think any other province could raise any objection.

A similar statement might be made in connection with section 147 respecting the representation of Newfoundland and Prince Edward Island in the Senate. As I say, those sections are not intended to be exhaustive. Perhaps other sections should be added. The idea I am attempting to convey is that there are some sections of the British North America Act which are only of concern to the dominion and some provinces. Under clause (b) they could be amended by act of the parliament of Canada upon the request or with the subsequent confirmation of the legislature or legislatures of the province or provinces concerned. There is a similar provision in the United States constitution which allows an amendment to be initiated in the federal parliament, passed there by a two-thirds majority, and ratified by three-fourths of the states, or the states themselves can initiate amendments and have the second step taken in the central parliament.

(c) Under clause (c) sections 21, 22, 28, 51, 51A, 90, 91, 92 (except as to numbers 12 to 14), 95, 96, 101, 118, 125—those are sections relating to matters of mutual concern to the dominion and all the provinces. We say they could be amended by act of the parliament of Canada, passed by an absolute majority of each house of the parliament of Canada upon the request or with the subsequent confirmation of seven provincial legislatures.

Some of those sections are fairly important, such as the constitution of the Senate. That is a matter of importance to the provinces, no less than to the dominion.

(d) Then, clause (d) concerns sections 92 (numbers 12, 13, 14)—that is the administration of justice, solemnization of marriage, property and civil rights—sections 93, 99, 121, 20, 50, all relating to fundamental rights so-called, such as language, schools, marriage, administration of justice, the duration of the life of a parliament, the sitting of parliament once a year, or as to any new subject of legislation. We say the amendment of those sections can be accomplished by act of the parliament of Canada upon the request or with the subsequent confirmation of the legislatures of all the provinces.

Now, a new matter touched on here is that of new subjects of legislation. It occurred to us that there might, at some time, be some new matter that would arise and some question might develop as to whether that matter should be dealt with by the dominion, by the provinces, by the dominion and one province or by the dominion and a majority of the provinces. It is true that the B.N.A. Act now gives that jurisdiction to one or the other, but to which one? We say that these new matters should be the subject of a conference between the dominion and all the provinces, and they should all agree. Relating to the method of amendment, we say that this section could only be amended by act of the parliament of Canada, upon the request or subsequent confirmation of the legislatures of all the provinces.

As I indicated yesterday, if the amending section itself could be changed lightly, then of course the constitution could be changed lightly. Everything depends upon the strength of that amending position. We would, therefore, add a subsection (e) to subsection (1) stating that it could be dealt with only by unanimous consent of all the provinces.

Subsection 2 is concerned with a matter of procedure, and would read as follows:

Upon the request of the appropriate legislature or legislatures for the amendment or repeal of a section of this act in clauses (b) to (e) of subsection (1) hereof the executive government of Canada shall within one year present to parliament a bill providing for same.

"The appropriate legislature or legislatures" means of course that if a matter relates only to one province and no other province is concerned, and if the single legislature requests the parliament of Canada for an amendment, then within one year the government of Canada should introduce that amendment. Of course, if it were a matter that required the consent of more than one province or the consent of all provinces, then the procedure would have to be in accordance with that.

Then section II follows necessarily; that the B.N.A. (No. 2) Act, 1949 is hereby repealed. It would serve no purpose if this first subsection should be adopted.

We have put in a third section III to provide for the power of the dominion to delegate jurisdiction to one or more provinces, and vice versa.

Now, we submit this humbly and not assuming it is perfect in this form. We do not even assume it is a draft section, but we suggest it is a framework and, like any other framework, may have to be altered. There may have to be new divisions in the framework or some of the rooms might have to be enlarged. We are happy, however, to submit it as a starting point.

Mr. DUPLESSIS: Mr. Prime Minister, before the meeting adjourned last evening I understood that this morning you were to tell us exactly the stand of the federal authorities in connection with the recent constitutional amendment of 1949, No. 2. I may have been under a wrong impression; but I think it would be important to know exactly the stand of the government in that regard. Yesterday afternoon, if I understood you correctly, you stated that the federal authorities would be willing to consider examining the whole constitution, including the new amendment.

Mr. ST. LAURENT: I will not say any decision was arrived at; but I understand the suggestion offered by Mr. Macdonald, for instance, would cover the whole field and would render subsection (1) of 91, enacted by the 1949 statute, inoperative. What I stated was that we had no objection to the discussion of an over-all procedure being over-all; but what I said this morning was intended to mean that we were not suggesting we would be prepared, if nothing else was

[Mr. Macdonald.]

agreed upon, to ask for the repeal of the 1949 statute. It would disappear in an over-all procedure; but it was not intended to be an undertaking to cause it to disappear if there were to be no over-all procedure.

Mr. FROST: Our suggestion was for an over-all procedure.

Mr. ST. LAURENT: That was my understanding; that it was the desire to discuss the possibility of an over-all procedure which would absorb this particular subsection of section 91.

Mr. DUPLESSIS: As far as Quebec is concerned, we listened carefully to the suggestions of Premier Macdonald and we would be prepared to consider them in principle as a starting point for the discussion. They are very interesting, and I believe Quebec would be willing to consider them.

It seems to us, however, that if, as we all hope, we are going to have a well-established and definite constitution, the special position of the province of Quebec must be considered. Quebec is not asking for any favours or privileges, but we want our special position to be recognized and admitted. It seems to us that any arrangement arrived at should be based upon contracts authorized by the legislatures and by the federal parliament, in order that there may be stability and security.

Mr. MACDONALD: That would be a contract written into the constitution?

Mr. DUPLESSIS: Yes.

Mr. ST. LAURENT: Instead of being merely an enactment?

Mr. DUPLESSIS: I may be wrong, but while respecting the opinions of others, I must say I am convinced that a law can always be amended, while a contract cannot honestly be amended in a unilateral way. Since we are all looking for stability and security, to my mind the best way to obtain that stability and security is to make sure there is a contract or agreement; and Quebec would favour this suggestion which I submit to the consideration of the delegates. But I think it would be very important and would be conducive to real Canadian unity if we had a stable, clear constitution established on a solid foundation, and not liable to be amended in a unilateral way by future legislation.

Hon. JOHN B. McNAIR (*Premier of New Brunswick*): May I say just a word at this stage. It is recognized, of course, that we were invited here to deal with a specific matter. That matter was a procedure to amend the constitution. We must not overlook the fact that the constitution is not entirely confined within the limits of the British North America Act, however. We are all in favour of working out some procedure of that nature, but I venture to suggest that as we get on with our deliberations we will find ourselves continually confronted with the necessity of getting down to more fundamental considerations.

I took occasion yesterday to suggest what I felt we would have to do before we reached anything of a final nature; that was, the establishment of a new constitution. I gathered that Premier Duplessis is very strongly of that view, and there are sound grounds in support of that suggestion.

To put into the British North America Act of 1867 specific provisions for its amendment does not entirely meet the situation, for different reasons. I have already suggested one, that our constitution is not entirely contained in that Act. I have in mind at the moment the British North America Act of 1915, which is very important as far as the provinces are concerned. That Act did not insert new provisions in the British North America Act of 1867. That is the Act which provides for the number of senators in Canada and their distribution as between districts. I have not seen the legislation, but I venture to suggest that Act No. 1 of 1949, which was passed at Westminster in order to validate the entry of

Newfoundland into the union, is in the same form. I do not know, but I anticipate that that Act did not insert any new provisions into the British North America Act of 1867.

I mention those two matters to illustrate what I have in mind, that by dealing with the British North America Act of 1867 we are not doing a complete job.

There is another objection, too, and it is this. Although we might agree on a procedure and have it written into the British North America Act of 1867, at the hands of the United Kingdom government, those provisions could be struck out some time in the future; and they would be struck out, I believe, at the request of the Canadian Parliament, under the procedure that has been established by usage over the years.

I mention these points to indicate that we are going to find ourselves confronted with more fundamental considerations than merely writing into the British North America Act provisions for the amendment of that act.

We did not prepare any concrete proposals, anticipating that others would be doing so and that we might well agree to take some proposals that would be advanced here as the basis of discussion. I believe Mr. Frost has made certain suggestions which are worthy of a great deal of consideration. Nova Scotia has given a good deal of consideration to the matter, and it might well be that we could agree to take something already advanced as the basis for our discussion. Yesterday Manitoba suggested that we might take up the proposals which were developed in 1935-36 as a basis for discussion, and we are prepared to go along with the conference in that connection.

We agree that we must have an amending procedure for the constitution, but I believe we should reflect upon this point, that first we must have a constitution in such a form that we know definitely what we are dealing with, before we can reach any finality in our work.

I do not want to press this view too strongly at this stage, but I think we will find—and it may be becoming more apparent—that we must get on with that more basic matter. I conceive that there will be great difficulty in these days in writing a new constitution, but I was intrigued with the suggestions made yesterday that certain fundamental things should be written into the constitution somewhere, perhaps a bill of human rights, and so on. I think a constitution for this country should have some colour to it; but against the possibility that we may not make progress in that direction immediately I suggested that at least we could set up, in the form of a Canadian document, the contents of the enactments which are now in the hands of the imperial parliament.

I do not want to say more on that point at this stage, except to agree that we must have an amending procedure for something, whatever it may be. We are prepared to go along with the conference and take as a basis for the studies we are to make the proposals of Ontario or Nova Scotia or Manitoba. But I do hope that out of this conference something very definite will result, for I think we must have it.

Hon. DOUGLAS L. CAMPBELL (*Premier of Manitoba*): Mr. Prime Minister and gentlemen, yesterday when I spoke I was in the position of being the first representative of the western provinces to address the conference. Today I find myself in the perhaps unenviable position of being the first layman to address the conference, after a group of very distinguished legal gentlemen have spoken. As a matter of fact I have been looking over the composition of our committee this morning, and I believe you have to come all the way down the table—and I use the word “down” advisedly—to the level represented by the Premier of British Columbia and myself before you find one of that great body

[Mr. McNair.]

of laymen to whom I refer as distinguished from the legal lights of our country, who naturally take a very important part, as they should, in the deliberations of a conference of this kind.

As a matter of fact even from that point on I presume we are about fifty-fifty, because I gather that we have all fortified ourselves with our attorneys general for this occasion. The point I am making is that we are fortunate in having such distinguished legal talent here from both the federal government and the provinces; but I feel the legal gentlemen will be the first to admit that they are glad to be reinforced by a great body of robust common sense and good judgment on the part of the laymen of the conference as well. As representing the laymen I would like to heartily endorse the position taken by Premiers Frost, Macdonald, and others and say that we from Manitoba agree with bringing forward suggestions only, as opposed to rigid proposals, in the spirit of contributing to the pool of ideas for discussion at this round table conference. We are opposed to urging and arguing specific plans. I think that view is important at this conference if we are going to achieve the progress that we desire.

I think that the Manitoba representatives believe that it is important, at least at this stage, to keep our discussion to the procedure for amending the constitution, rather than getting into a discussion of the merits of particular amendments that might be proposed. We realize, of course, that the particular amendments themselves would be very interesting, important, and would no doubt bear a very close relation to the matter of procedure. If, however, we allow ourselves to be drawn into that phase a great deal of time would undoubtedly be consumed and some of the unanimity that has been achieved to date would be lost in the process.

We would simply renew the suggestion which we mentioned in our brief yesterday and which is found at page 27 of the *Hansard*. It is, as I mentioned, a digest of the report of the committee of 1935, given at the last session of parliament by the Right Hon. Mr. St. Laurent. There is no need for me to read it now because it is incorporated in the report given yesterday. I think it gives, in somewhat different language, almost the same suggestion as was laid before us this morning by Premier Frost. It is the same, I gather, as the suggestion put forward by Premier Macdonald, except that he went into greater detail by mentioning the specific clauses that would come under the various headings enumerated there.

Our suggestion would simply be, and it is only for consideration, that this report, or a digest of it, might be taken as a basis for study by the conference. Reasonable progress might be made if, after some consideration of that report and other suggestions, we decided to appoint some sort of a continuing committee from this conference which would work out something in greater detail which would be submitted back to a reconvened conference at some later time.

HON. BYRON I. JOHNSON (*Premier of British Columbia*): Speaking for British Columbia, may I say that I concur in the remarks of my colleague from Manitoba, particularly where he makes reference to myself as being one of the laymen who are in attendance here. I should couple with his reference my friends from Alberta and Saskatchewan, Premiers Manning and Douglas, who have not had legal training either.

I agree with the suggestion that we should get down to discussing some of the definite proposals that have been put forward. We cannot come to conclusions until we do.

We realize that there are difficulties but, as I said yesterday, I think that the 1935 report could very well form the basis of our discussion. Mr. Frost, Mr. Macdonald, and Mr. Campbell all mentioned and centered their remarks

around the 1935 report and, without going into any more detail, I shall say that we from British Columbia concur. In other words, let us go back to the 1935 report and start from there.

I should touch on Mr. McNair's suggestion about a new constitution. That is something which may be very desirable and may come into being, but I believe our job today is to try to find a way to amend our present constitution in the hope that we may reach the point where we are all agreed on the type of constitution we want. At such a stage it would be more appropriate to discuss any new constitution.

As far as British Columbia is concerned we would now like to discuss the proposals placed before the conference by Premiers Frost and Macdonald. Mr. Campbell has also suggested that is what he would like to do.

Hon. J. WALTER JONES (*Premier of Prince Edward Island*): Mr. Prime Minister and gentlemen: I wish to congratulate you on the success of the conference so far. I see no reason or excuse for anyone getting up and walking out at this stage but I think we must move along to particular points for agreement.

I speak as a layman, and I may say that I am one of a group of farmers present here. I was looking at the Fathers of Confederation the other day and I could not find one farmer in the group. The professional men were "ruling the roost" in those days. Here, however, at this conference we have four or five farmers—Mr. Manning, Mr. Smallwood, Mr. Campbell, Mr. Johnson and myself. I think that the farmers are feeling better.

Our suggestions yesterday were embodied in Premier Macdonald's suggestion of topics for discussion and we would just like to go along with those, if the committee will agree.

Hon. T. C. DOUGLAS (*Premier of Saskatchewan*): Mr. Chairman, yesterday I endeavoured, on behalf of the Saskatchewan delegation to place our proposals before the conference and I see no need of reiterating any of those proposals today.

It seems to me, now that the provinces have placed before the conference what are really their suggestions, the next step is for us to try to work out some agenda by which we can discuss the various problems and attempt to get some agreement in principle as to how each of the problems can be met. We could then probably set up a continuing committee, possibly composed of the attorneys general of the various provinces, to try to work the principles into concrete terms for submission to a reconvened conference.

We have, as a basis for discussion, the proposals placed before us this morning by the premiers of Ontario and Nova Scotia. We have the suggestions of the various provinces as given yesterday, and it seems to me that, from now on, there is not a great deal of point in contributing further to those general suggestions. I believe that our *modus operandi* should be to take each of the topics, discuss them one by one, and see what general agreement we can obtain.

I noticed that yesterday a number of the provinces suggested that they were in agreement on the principle that the constitution of Canada should be a Canadian statute. I do not know how general that opinion is but it might be a topic for discussion and we could see whether there is general unanimity on the proposal that eventually the B.N.A. Act become a Canadian statute.

There seems to be general unanimity on the proposal that the parliament of Canada should have power to amend the constitution in so far as it affects the executive powers or constitutional privileges of the executive government at Ottawa. Although I have not taken the trouble to list them, several of

[Mr. Johnson.]

the provinces—certainly more than half of them—have already suggested that they can see no objection to giving to the parliament of Canada and any one province or several provinces the power to make amendments regarding matters which only affect those particular provinces and do not affect all of Canada.

If we can get that far we can put that matter out of the way and turn it over to the continuing committee for drafting. We might then go to the next point on the agenda, those matters which are of general concern to the dominion and to the provinces. There is not as much unanimity on this point, if we can judge by the statements made yesterday and this morning. I have not yet heard anyone say that none of these matters can be changed without unanimous consent. Saskatchewan suggested yesterday, and I think one or two of the other provinces did likewise, that these matters of general concern might be amended by the parliament of Canada and a majority of the provinces. This morning the premier of Nova Scotia mentioned seven provinces which would be two-thirds. I do not think we would quibble about the number but it should be something of a majority, short of unanimity, and devised so that it would not be possible for one part of the country to veto suggestions for change of which the majority of Canadians are in favour. As I say the number should be something greater than simple majority but short of unanimity.

It would be very important, of course, to select proper items for inclusion on our agenda but I would like to see us deal with them by topics. I think we should have a general discussion of the items which Mr. Macdonald has suggested, and perhaps other items, which can be changed by consent of the parliament of Canada and a majority of the provinces, whether that majority is something more than a half, or two-thirds, or whatever figure is agreed upon.

There also seemed to be general agreement both yesterday and today that there ought to be certain entrenched clauses which could only be changed by the consent of the parliament of Canada and all of the provincial legislatures of Canada. I think that subject ought to be placed on our agenda for discussion to see what area of agreement there is.

I notice the suggestion this morning by Ontario that the legislative jurisdiction of the provincial legislatures might be included under such a provision. We would want to advance the argument, with regard to that suggestion, that if the whole of section 92 is going to come in as an entrenched clause, it would virtually amount to the compact theory of confederation. It would mean a rigidity that the constitution has not suffered from up to the present time.

There is a great area of agreement—everyone seems to agree on the matters of language, education, solemnization of marriage, and administration of justice. I do not think that there would be any great disagreement on those matters.

Yesterday, we suggested that Saskatchewan was prepared to go further. I would urge that later consideration be given to the inclusion in the entrenched clauses of a bill of rights. There has been a great deal of discussion in all political parties in Canada of a bill of rights, and I think there would be general agreement in support of the inclusion of such a bill of rights in the entrenched clauses.

As the discussion proceeds I would like Mr. Macdonald to elaborate on this matter of the entrenched clauses. I notice that he included subsection 13 of section 92, property and civil rights, in the entrenched clauses. If the premier of Nova Scotia has in mind the thought that the whole of subsection 13 could not be taken out of section 92 without the unanimous consent he mentioned, I would agree with him. But, if his suggestion has the effect of saying that no part of that subsection can be removed without unanimous consent, it would mean that the national labour code, which has now been interpreted in the courts as being part of property and civil rights, could not be put into effect without the unanimous consent of the provinces. Similarly a social service program

could not be instituted without unanimous consent of the provinces and I doubt whether the premier of Nova Scotia intends that.

I think we would agree with him that there should be some provision that subsection 13 could not be removed in its entirety but I do not think it would be fair to say that nothing relating to property and civil rights could be put effect without the unanimous consent of the provinces. That would be imposing a rigidity upon amendment of the constitution which would make the position no better than it has been. So far as the amendment of the constitution is concerned, it still lies with the parliament of Canada by an address to Westminster. While that is a difficult procedure, I would much rather have a difficult procedure than an impossible procedure. In our opinion too rigid a procedure would be an impossible procedure. We prefer to have it the way it is rather than impose too great a rigidity in the amendment.

Mr. Macdonald in his suggestions, and one or two other Premiers, have spoken in favour of delegation of powers by the federal government to the provinces, giving the provinces the right to receive the delegation of power. I myself would like to have that discussed. If there could be a general area of agreement there it might be possible to take steps to have legislation passed at the coming session of parliament and in the other legislatures providing for that amendment while we are working out the details of the other. It may take some time to work out these matters and procedures to cover the whole of the constitution, but in the meantime the right to delegate powers can be established. I think that it might provide for flexibility that would help a great deal. Therefore, Mr. Chairman, I should like to suggest that when the various Premiers have spoken, if it seems to meet the consensus of opinion, we ought to take the various subjects that have come up, but not necessarily in this order, namely, (1) the question of the constitution becoming a Canadian statute; (2) the question of giving the Canadian parliament power to amend those matters relating to their own jurisdiction; (3) the right of parliament and any province concerned to make amendments with reference to matters which concern them only; (4) the rights of parliament and any given number of provinces to make an amendment with reference to matters which are of joint concern, and (5) and finally, the entrenched clauses which can only be changed by unanimous consent. I would still hold for discussion sometime in the course of the next few days whether or not the Dominion government and the provinces would be prepared to consider immediate action in providing for delegation of power. I think we should deal with these questions in some order, but not necessarily in the order I have indicated, to find out if we can agree on the general principle. Then I think it would be wise for this conference to set up a continuing committee with the advisers to try to resolve into legal terminology the principles to which we have agreed.

Hon. E. C. MANNING (*Premier of Alberta*): Mr. Prime Minister and gentlemen, the discussions of both yesterday and today have made clear the fact that our problem is compound in nature. We have before us the specific matter of devising a formula to provide for amendments to our constitution without reference to the parliament of the United Kingdom. Upon the desirability of that there seems to be very general agreement. But hand in hand with that we have the broader, and in some respects perhaps even the more important question of the possible re-drafting of the Canadian constitution so that it may ultimately become a purely Canadian document domiciled and amended within this country.

I find myself in very substantial agreement with what was expressed this morning by Premier McNair. It seems to me that if we attempt to divorce the two parts of this one comprehensive issue we are making a grave mistake, for

[Mr. Douglas.]

sooner or later I think we would all agree we should come, and perhaps must come, to the place in this country where we have a constitution which is purely a Canadian document.

In his statement yesterday morning Mr. McNair made this observation which I think is very well taken. These were the words: "The time for such a move—" that is for redrafting of the constitution—"is now opportune. Some occasion in the future may conceivably find us attempting such a change amid the heat and turmoil of an international crisis". I think that expresses a viewpoint that is borne out by plenty of evidence. I would suggest, Mr. Chairman and gentlemen, that there is no great problem in keeping these two integral parts of the one issue before us at the same time. The first and immediate issue is to devise a formula for the amendment of the Canadian constitution without reference to the United Kingdom parliament. In our view the suggestions advanced this morning by Premier Macdonald would form a very acceptable and practical basis for arriving at that formula. If, as an initial step, we as a conference could agree that the four major classifications suggested by Premier Macdonald and also by the Premier of Ontario, were satisfactory, it would be a definite step forward. We could then proceed to a detailed analysis of the subject matter that is proposed for each of those classifications.

I would not suggest that we can complete that in a conference of this kind. We should confine ourselves, to agreeing to the general principle and have a continuing committee of legal experts carry that analysis further and submit recommendations and alternate suggestions for consideration at a future conference. I think that the method suggested by Premier Macdonald by specifically enumerating matters to come within each of the proposed classifications is sound and might well be adopted as a guiding principle by the conference. But at the same time that these matters were being considered by a continuing committee I would emphasize that we should also embody the proposal advanced by Premier McNair and that the continuing committee should proceed to make a redraft of the constitution for our consideration at a later date. Perhaps it would be better to say a redraft of the constitution embodying primarily the present provisions of the British North America Act, together with other statutes of the United Kingdom parliament that relate to the constitution of this country; and also of course embodying the provision and formula for amending within this country.

I would say, Mr. Chairman, in our view sooner or later in this country we should, and we believe must, come to grips with that broader question. We can agree with Premier McNair in what he said about now being the opportune time. Certainly no other time is going to be more opportune, and if we attempt to divorce these two things one from the other, I am afraid that at some later date if we decide to go into the broader question of redrafting the constitution to arrive ultimately at a purely Canadian document we shall merely then have to go over a great deal of the same discussion that could well be covered in the drafting of a formula for amending the constitution.

May I also add that if we proceed with the ultimate objective of redrafting the constitution to make it a Canadian document, when that goal is arrived at ultimately the redrafted constitution itself obviously would have to be ratified by the parliament of Canada and by the legislatures of the Canadian provinces; and that procedure would provide the effect of a contract along the lines mentioned by the Premier of Quebec, and would take care of the very fundamental principles that he emphasized in his remarks this morning.

Our suggestion, Mr. Chairman and Gentlemen, would be that this conference, should agree first of all on the desirability of arriving at a satisfactory formula for amending the constitution without reference to the United Kingdom parliament. We should agree that our ultimate objective would be the redrafting

of the constitution to make it a purely Canadian document. To that end a continuing committee should be established to which this conference could give direction in the very general principles such as these classifications, under which the subject matter of the constitution would be arranged. We should proceed from there to get some draft prepared, and alternate suggestions prepared by competent constitutional authorities which would then receive the detailed consideration of this conference at some future date.

Hon. J. R. SMALLWOOD (*Premier of Newfoundland*): Mr. Prime Minister, when the Premier of Alberta yesterday gave his reasons for welcoming Newfoundland into the Canadian family he said that in previous Dominion-Provincial conferences Alberta had been the last province to speak. That honour had now fallen to Newfoundland. We accepted that honour on the grounds that the first should be last and the last first; but we did not bargain for what has just happened, namely, that our thunder should be stolen on us. Some of the remarks that he has just made are remarks that I was going to make. There have been half a dozen times this morning when I have been very clear in my mind as to what ought to be done. Premier Frost resolved the whole matter for me until Premier Macdonald spoke.

When it comes merely to amending the present British North America Act it seems very very simple until I begin to worry about the point made by Premier McNair, which seems to me at least to be a very important one. In between whiles I have read the confederation debates and one or two books. I have heard and read references from time to time to the great dispute as to whether the act of confederation was a compact; whether it was created by the four original provinces and the power of the federal parliament given by the four original provinces, or whether the original confederation was created outside of Canada by the parliament of Britain. Which is which I do not know, but it seems to continue as an argument.

It seems to me that the strength of Premier McNair's proposal is that we can all accept the compact theory by first making a compact. The thing that puzzles me is this: If Premier Frost's and Premier Macdonald's proposals were acted upon, do they not amount merely to amending the present act? True, the amending is done here in Canada, but it is the amending of an United Kingdom act, which act presumably would remain in the United Kingdom, so the constitution of Canada would still be The British North America Act, thereafter amended from time to time in Canada. Still, it would not be a Canadian document and would not be domiciled in Canada, as Premier McNair put it.

On the other hand, if his proposals were acted upon, I am unable to follow what it would then become. Would it become an Imperial act, or would that Imperial act cease to exist? Would a new and purely Canadian act then give authority to the federal and provincial parliaments? This idea of a treaty between the federal parliament, the provincial legislatures and the parliament of the United Kingdom, if a constitution were based on such a treaty, what would that constitution be? Would it then be domiciled in Canada? Would it be a purely Canadian document? I wish Premier McNair would take that matter up because it has me puzzled.

Everyone appears to desire a purely Canadian constitution. Does Premier McNair's proposal make it that? If his proposal is not followed, do we then have a purely Canadian constitution if it remains the British North America Act, which is an act of the parliament of the United Kingdom? Frankly, I am a little puzzled about it. I was quite clear until I began to think about Premier McNair's proposal. The amendment of the present British Act seems to be fairly simple, until you come to the point that Premier McNair has made.

[Mr. Manning.]

Mr. ST. LAURENT: Gentlemen, are there any others who wish to make further comments on the suggestions that have been put forward?

Mr. MACDONALD: In answer to Mr. Smallwood, the section which I have suggested here, according to my idea would be enacted by the British parliament. Every section of the British North America Act, however, would be dealt with either in clauses (a), (b), (c), (d) or (e). Provision would be made for the proper amendment of every section as well as dealing with new subject matter. It would describe how all sections of the British North America Act should be treated. There would be no trouble about amending the B. N. A. Act if this section were adopted, and it would be amended somewhere in Canada. Some parts would be amended by the dominion alone, other parts by the dominion and one province, by the dominion and a majority of the provinces or by the dominion and all the provinces. If this were passed, the British North America Act could be dealt with in Canada.

Mr. SMALLWOOD: It would be the British North America Act and, except in name, entirely Canadian.

Mr. DOUGLAS: It would still be an Imperial statute.

Mr. MACDONALD: It is the only way we can do it. We have no power now to do all the things that are set out here, and the only place we can get it is from the British parliament.

Mr. DOUGLAS: It would have to be amended first, and then the act could be transferred afterwards.

Mr. MACDONALD: It would seem to me that the purpose of this conference is to devise a method of amending it. While I can see the viewpoint, and I have a great deal of sympathy for it, that we should now deal with substantive matters such as a bill of rights and so on, it seems to me that if we are going to deal with that problem now when we are faced with considerable difficulty about agreeing on one section such as this humble submission of mine, if we are going to deal with 148 sections, we will take a long time. We are getting away from the real purpose of the conference.

As you suggested yesterday, Mr. Prime Minister, you do not want the conference to be confined by anything that has been done. I have no doubt that if the conference desired, it could consider substantive amendments. It seems to me, however, that if we get the method first, we can deal later with the substantive amendments such as where the constitution should be domiciled.

Mr. McNAIR: May I say a word or two in answer to the question put by Mr. Smallwood? First, dealing with the point raised by Mr. Douglas, if the work of this conference results only in the establishment of an amending procedure for the British North America Act, our constitution will remain in its present state, an enactment of the parliament of the United Kingdom. I cannot conceive how, merely through the use of the amending power, that constitution can be brought to Canada. I believe that is a proper answer to that question.

We would have an anomalous position in this respect, that an act of one parliament would be amended by another parliament. The constitution is still the pronouncement and the law of that other parliament. It might be a safeguard, but it might create serious risks for us. I feel that the final step in this work should be the divesting of the United Kingdom parliament of any authority over the constitutional affairs of Canada. I believe that is vital to the whole situation. Otherwise, we may be faced with this situation, notwithstanding the safeguards we may endeavour to set up, by leaving the authority in the Imperial parliament to deal with Canadian constitutional matters, we might find some

Canadian parliament of the future seeking, not an amendment to the British North America Act of 1867, but by separate legislation to change the situation in material respects.

Now, the British North America Act of 1915 which brought about very important constitutional changes, was not an amendment to the act of 1867. The British North America Act (No. 1), 1949, if I understand it correctly, was separate legislation, and did not take the form of an amendment to the British North America Act of 1867. My point is that, as long as the Imperial parliament is left with a vestige of jurisdiction to deal with the constitution of Canada, especially when present day procedure is followed and action is taken as a matter of course upon the request of the Canadian parliament, our whole plan might be circumvented. I say there is a risk in it. I believe our work should finally result in having that residuum of jurisdiction, retained by the United Kingdom parliament by virtue of the Statute of Westminster, cancelled out.

There are doubtless different plans that could be followed to set up a new constitution in Canada. The suggestion advanced in my submission of yesterday was predicated upon the opinion it would be necessary to get some legislative authority at Westminster to proceed in the matter. It was set out in yesterday's *Hansard*, so I shall not repeat it. There are ways of bringing it about, but it will not be by use of this amending power we are seeking at this conference. I do not believe there is anything more I have to say at this moment.

I have just been asked a question by the Premier of British Columbia, so perhaps I might be permitted to read a short passage from my brief submitted yesterday which deals with this particular point.

It has been suggested in some quarters that the constitution should be made an Act of the parliament of Canada. With this I would most strongly disagree. In my view the constitution of Canada should not be within the unfettered control of the parliament of Canada or of any other legislative body. The constitution of Canada and the power of amendment thereof should rest on a deeper basis than the will of a single legislative body.

Now, just to amplify that, might I observe that any suggestion of establishing a constitution for Canada as a statute of the parliament of Canada, is, in my view, quite untenable. I say that first because it would result in the position that the parliament of Canada would be giving to the provinces either new powers or reaffirming them in their present sovereign powers, which is a motion to which I for one would not want to subscribe.

Mr. FROST: But may I ask this question. If we agreed on the amending procedure beforehand and that were made part and parcel of the act, would that take away your objection? Supposing before the British North America Act was made an act of the parliament of Canada the amending machinery was agreed upon. Would that meet your objection?

Mr. McNAIR: And included in the statute of the Canadian parliament?

Mr. FROST: Yes.

Mr. McNAIR: I do not think it would.

Mr. FROST: I mean it would include the machinery we hope to arrive at here for making amendments. Would that then meet your objection?

Mr. McNAIR: If I get the question correctly it is this: would it be satisfactory to have our constitution set out in a statute of the Canadian parliament, with provision with respect to amendment and all the safeguards included therein?

[Mr. McNair.]

Mr. FROST: That is right; and confirmed by the legislatures of the ten provinces.

Mr. McNAIR: No; I would say it would not meet the situation, because by its own act or of its own motion clearly the Canadian parliament could wipe out all those provisions having to do with the amending procedure, together with any safeguards which might have been agreed upon and placed therein. It would have power to do that.

Mr. MACDONALD: But surely the courts would have to rule in any such case.

Mr. McNAIR: Certainly the Canadian parliament could repeal or amend its own act. That is the answer.

Mr. MACDONALD: What greater security would you want?

Mr. McNAIR: Let me read my suggestion again.

To evolve a new constitution free from the difficulties and hazards now prevailing, different methods of procedure may be open to us. At present the following method commends itself to me; the initial step would be a conference of representatives of the dominion and of the provinces to formulate a proposed new constitution. This present conference might itself well undertake this task. But since the drafting of a completely new constitution would probably require a very long period of time, the new constitution might well consist of the substance of the British North America Act, 1867, and other relevant statutes, with such necessary changes as might immediately be agreed upon, but in any event including a procedure for amendment thereof in Canada. I do feel, however, that the 1949 amendment to the British North America Act should be most carefully reviewed before being carried into Canada's proposed new constitution.

When agreement has been reached on the draft the dominion and the provinces would, in conference, determine the nature of appropriate legislation to be sought from the parliament of the United Kingdom to authorize and empower the dominion, the provinces and possibly the United Kingdom to enter into a treaty, after approval of the proposed new constitution by the parliament of Canada and the legislatures of the several provinces. The treaty contemplated would declare the proposed new constitution to be, and to become, the constitution of Canada on and after a day to be fixed in the treaty. The United Kingdom legislation would also provide that upon the coming into force of the new constitution, as provided in the treaty, the British North America Act, 1867, and certain other enactments of the parliament of the United Kingdom are repealed.

I think by that process we could arrive at a constitution which would be the fundamental law of this country. There may be other methods, but I can say that is one which appeals to us as a result of the thinking we have given the matter.

Mr. JOHNSON: I should like to make a suggestion, because we could go on with this discussion almost endlessly, as to what we should do about domiciling our act in Canada, and other matters. May I suggest that a committee be set up to draw up an agenda setting out the points which could be referred to the conference. Such a committee might meet this afternoon and discuss the points which would be dealt with here, and come back tomorrow morning. That might be the answer to our problem. It seems to me in that way we would get something specific which we could go ahead and discuss, and I offer this suggestion with a view to getting something definite before us.

Mr. ST. LAURENT: What would be your views, gentlemen, on Premier Johnson's suggestion that a committee attempt to draw up an agenda? It may be that there are still some very substantial questions that the conference itself has to consider further before a committee could make very much progress on a specific agenda.

There is the view which has been expressed by Premier Duplessis and Premier McNair, which I understand to be that an amending procedure by statute would not be satisfactory to them, that they would not wish to participate in something that did not make what was being done the equivalent of a compact, and that would have to be regarded as such. That is a very substantial point. Possibly there would be other ways in which a statute could become an entirely Canadian document. I have no reason to say so, but I have the firm conviction that the United Kingdom authorities would be only too happy to divest themselves of any right to deal by legislation with Canadian constitutional problems. But before it would be prudent for us to have them do that I believe we would have to be quite sure that we had here everything required to be able ourselves to make at any time whatever amendments we might find it desirable to have made, and on the other hand to have the sure safeguards that the Canadian public would wish to see in a Canadian document as the unalterable basis of that Canadian document.

It is a very big question, and I think probably many of us would like to give it some thought, and would probably have some further views we would wish to express. I think the matter is one as to which we would have to know the obstacles to overcome in order to deal with it ourselves. I do not think there would be any desire in the United Kingdom to retain jurisdiction if we were satisfied that we had provided in practicable fashion for everything we might wish to have done at any time in respect of our problems.

I do not know that there is anything more I can say on the point.

Mr. MACDONALD: It is nearly one o'clock now; could we adjourn now until three o'clock this afternoon?

Mr. ST. LAURENT: If that is agreeable we might adjourn at this point.

Mr. FROST: Might I ask a question. If such a document as Mr. McNair refers to is to be arrived at ultimately, amending machinery would have to form part of it. Is there anything to prevent us going ahead and discussing amending machinery, with Mr. McNair's reservation that he thinks when we arrive at that machinery it should be part of such a document as he mentioned? Why not go ahead with the amending machinery end of it, having that reservation in mind? That would give us an opportunity of thinking over that problem.

Mr. MCNAIR: We have no objection at all to that course. If we could not arrive at any agreement on the larger question certainly we would be most anxious to have amending machinery of some kind devised to deal with the constitution in London by action in Canada.

I do not think we would need to have two statutes. I agree with Premier Macdonald's suggestion that the insertion of such a procedure in the act of 1867 would meet the problem in substantial measure, but I do think we would need to have a British North America Act of 1950 or 1951 to deal with statutes other than the original act of 1867.

Mr. FROST: My point was just this; that if the amending machinery, if I can put it that way, has to be devised, we might get on with that in any event. Then if we could not arrive at methods of making amendments ourselves it would seem to me that necessarily we could not agree upon Premier McNair's broader propo-

[Mr. Johnson.]

sition, and that we might be well advised to go ahead and see what we can do with the narrower matter, holding the broader question until we see if we can answer that first question. I just offer that suggestion.

Mr. McNAIR: I would agree wholeheartedly with it.

Mr. ST. LAURENT: Then may we rise at this time and come back at three o'clock this afternoon?

At 12.55 p.m. the Conference adjourned.

AFTERNOON SESSION

The Conference resumed at 3.07 p.m.

Right Hon. L. S. ST. LAURENT (*Prime Minister*): Gentlemen, when we rose at 12.55 Mr. Frost had asked Mr. McNair if he felt it would be possible to go on and consider an amending procedure, suggesting that if we could not reach common ground on that, the other greater question of getting a constitution domiciled in Canada would not be one upon which we would be apt to get very far.

I understand that Mr. McNair said that he had no objection at all to that course.

Hon. JOHN B. MCNAIR (*Premier of New Brunswick*): Mr. Chairman and gentlemen: To remove any doubt as to New Brunswick's position at this stage of the proceedings of the conference I would like to make a further very brief observation or two.

First we are strongly of the view that a procedure should be worked out to amend in Canada the constitution. Next, if our constitution is to remain an enactment of the parliament of the United Kingdom, such procedure should be made an integral part of the constitution through appropriate legislation at Westminster.

We feel very strongly that our work here must carry us that far. The 1949 amendment to the B.N.A. Act (Number 2) creates a situation which, from the viewpoint of the provinces, must be remedied in any event.

We have the Prime Minister's assurance that, if an over-all procedure for amendment is agreed upon, last year's amendment will be surrendered.

Further, we believe that in time this country is bound to have a constitution of another nature—a purely Canadian document. We feel that the time is now opportune to undertake its formulation.

Again we feel that while many improvements could be made in our present constitution, we would be content at this time to subscribe to a Canadian constitution containing what is now contained in the B.N.A. Acts and other associated legislation of the United Kingdom. In short, we would be willing to transfer to Canada the constitution as it now stands.

I wish to repeat and to make it abundantly clear that we are prepared to go along and work out a procedure in any event.

Mr. ST. LAURENT: Mr. Duplessis, would it be satisfactory to you if we were to proceed in that manner?

Hon. MAURICE L. DUPLESSIS (*Premier of Quebec*): Yes, to a certain extent. As far as Quebec is concerned we want it to be clearly understood that we consider the constitution to assert certain principles which are not admitted by

others. Consequently, if we were to start by accepting as a basis, the present constitution, it would be with the understanding that our opinions and our attitudes are to be considered, as far as Quebec is concerned, as being fundamental principles on which we insist. Briefly, and to sum up, we have a constitution today. This constitution refers to certain things of more or less secondary importance and to certain other matters of vital importance. We have, as one basis for discussion, the instructive brief produced by Premier Macdonald.

To my mind the first thing is to remedy the most recent situation. The amendment which was passed recently by the House of Commons, we consider to be a definite encroachment upon provincial rights, and I think that it would be appropriate to settle that question.

We consider that the constitution is one thing that must be considered as a whole and not in a piecemeal fashion. The federal government by recognizing that situation, without necessarily stating it is wrong, and by recognizing the reasons for which we protest against the amendment, would make co-operation easier and more friendly.

There is no doubt, to my mind, that the amendment of 1949 is a most serious and severe encroachment upon provincial rights. I think that, when we are gathered here in a spirit of friendly co-operation, it is only fair to say that serious causes of dissatisfaction and difficulty should be put aside.

I do not, for a moment, doubt the good faith of those who approved of the amendment but, it happens sometimes when an amendment is submitted, that for one reason or another the real contents of it are not fully realized. There is no doubt whatever that this amendment, with all due respect for different opinions, is most inappropriate and certainly a definite encroachment on provincial rights. I think that when we start discussion in a friendly way we should brush aside the obstacles and start anew.

Mr. ST. LAURENT: I think, Mr. Premier, that I am bound to be quite as frank in stating my opinion as you have been in stating yours.

I cannot admit, as a matter of principle, that the amendment of 1949, Number 2, is an encroachment on provincial rights. I cannot admit that; and I do not think that my colleagues can admit it. What we did say was that if we could get machinery that would cover the whole field of the constitution, that machinery would include whatever is now possible under the 1949 Number 2 amendment. That amendment could be repealed, not on the ground that we admit that it is an encroachment on provincial rights, but on the ground that the existing constitution may very well lack some things which we would agree it should contain. As an illustration, there has been a suggestion in the views put forward here that the provincial legislatures should be the bodies speaking for the population of their own respective provinces in respect of some of the matters within the jurisdiction of the federal authorities. That is not there now. It perhaps would be quite proper that it be there, and we are quite prepared to consider with you gentlemen putting there something that is not already provided for.

It is the same with respect to these really fundamental rights. They are regarded as sacred by all Canadians when, as a matter of the constitution itself, they are no more formally protected in a legal way than any other provision of the constitution. We are quite prepared, and we are even hopeful, that it will be possible to make some of these distinctions in the constitution as to matters which are of such a fundamental character that great rigidity has got to be stipulated with respect to them and others which are not of that fundamental character; but we would hope that in order to do that it would not be necessary for us to have controversies over matters about which we cannot agree.

[Mr. Duplessis.]

I would not hope to convince the premier of Quebec that the 1949 statute was not an encroachment on provincial rights. I do not think he would hope to convince me that it is; but in spite of the fact that neither of us expects to convince the other that he is wrong we can both agree on what would be a right result. Well, then, would it not be the sensible thing for us, acting in as constructive a way as we know how, to get the things that we can agree upon as the right results without having as a preliminary to convince either the one or the other that the other thing is entirely wrong? It is in that spirit that I stated, when I heard these observations made yesterday that there was concern about the interpretation that might be placed on the 1949 (No. 2) Act, that we wanted to get in the same position with respect to the federal constitution that the provincial authorities are in in respect to the provincial constitution. If we can get that in some other way that would remove everybody's anxiety or concern about the terms of the 1949 (No. 2) Act we are not going to insist on this if it is an obstacle to agreement.

But I would not like the impression to go forth that we are admitting it amounted to a dangerous encroachment on provincial rights. Possibly it is something like the compact theory of confederation. Whether it be a compact or whether it be a statute, it is something there which operates as a constitution. If we can agree that there are certain things that are going to be respected, whether it be as a result of one's opinion that it is a compact or another's opinion that it is the right and moral thing to do does it matter if the result we reach is one that does the thing that we all want?

MR. DUPLESSIS: I think that everyone here wishes to get the best results possible and find the fairest ways and means of achieving what we desire, namely, a Canadian constitution for Canada, made in Canada, by Canadians and for the benefit of Canadians. I respect the views of others, but it is my duty to state the views of Quebec. We are speaking for Quebec. As I said before, the best way to arrive at a settlement is by frank discussion of different views and by desiring, as we all do, to explore the possibility of arriving at a fair decision in the matter. Without any reproach to those who called the conference I think it would have been better to have left things the way they were before the conference. That is a matter of opinion and that is why when the Prime Minister asked me what I thought about the proposal, I had to express my opinion frankly, and I am convinced I also express the views of my province in saying that.

MR. ST. LAURENT: You said, sir, there were some things that were less important, some that were more important and some that were fundamental. I think that most of the provincial representatives who have expressed their views so far have agreed that there are those classifications. Of course the most important are the things that are fundamental. There have been indications by some delegates here as to what they consider the things that are fundamental. Perhaps it might be a method that would lead to some progress if there was a discussion as to whether or not those that have been indicated as fundamental are regarded by all as such. If they are so regarded by all, and if the enumeration is regarded by all as being sufficiently inclusive it could be so indicated.

HON. ANGUS L. MACDONALD (*Premier of Nova Scotia*): Mr. Prime Minister, I asked a question as to the meaning of the phrase "Constitution of Canada", as used in the British North America (No. 2) Act, 1949. I went on to ask was the effect of it that the parliament of Canada could amend all sections of the British North America Act other than those specifically excepted therein, and if the answer to that question was "No" then what sections of the B.N.A.

Act could be amended by the dominion parliament under the clause? If an answer were given to those questions generally the mind of the Premier of Quebec might be a little more satisfied.

Mr. ST. LAURENT: Mr. Macdonald, I think it would be presumptuous for anyone to attempt to say in any authoritative way what the answer should be.

Mr. MACDONALD: Yes.

Mr. ST. LAURENT: We used language that is similar to the language used in 92 (1), and acting unilaterally we did not feel that it would be proper for us to attempt to say to what that language would extend. We attempted to provide that it would not extend to anything that was within provincial jurisdiction; that it would not extend to any rights guaranteed to a legislature or to a government of a province; that it would not extend to anything secured to any class of persons with respect to education; that it would not extend to anything respecting the use of the English or French language. Then there was added that it would not extend to the requirements of the constitution that there be a session of parliament at least once a year and a general election at least every five years, save with a proviso for postponing in the event of any cases of war real or apprehended, leaving it to the courts, in the event of any disagreement with our views to say that something we were attempting to do went beyond what we were entitled to do.

There are a certain number of provisions in the British North America Act which are part of the constitution of each province. They certainly are not included in 91 (1) because under 92 (1) the provinces respectively have exclusive jurisdiction in that regard. There are certain other provisions which are spent provisions. There are certain others which certainly involve rights guaranteed or secured by a Constitutional Act, for instance, the boundaries between the provinces. There are others which refer to the distribution of the assets as they existed originally. They certainly do guarantee rights to the provinces.

There are other provisions which are clearly rights that the legislatures enjoy. For instance, wherever there is joint jurisdiction extended—wherever there is joint jurisdiction given to parliament and to a legislature there is there a constitutional right given to the legislature to legislate with respect to the matter included in that section. That is certainly something which could not be interfered with. For instance, there are provisions which relate to certain aspects of the administration of justice. The administration of justice is something over which the legislatures have control, and with respect to which they have rights guaranteed by the constitution. The field really narrows down to these matters which affect the set-up of the central authority. Even there there are some provisions which it has been suggested here should not be left to the unlimited control of parliament. I think they would be under the unlimited control of the central parliament. For instance, those which refer to the Senate and to the representation in the House of Commons are, I think, a part of the Canadian constitution. They are not matters which are excluded by the exceptions.

Now, it has always seemed to me that was something which was lacking in the constitution. No provision was made in that respect, probably because the over-all legislative authority was being retained in the parliament at Westminster. It may very well be that when we come to the position where the legislative jurisdiction will not be retained in the parliament at Westminster, it would be conducive to greater confidence, a more satisfactory feeling throughout the Canadian nation, if there were some guarantees about them. I have in mind, for instance, the provision which states that the representation of a province in the Senate shall be such and such, and that it shall always be entitled to no fewer

[Mr. Macdonald.]

members in the House of Commons. Probably that is something which should be surrounded with guarantees which do not exist at the moment.

There is a matter about which I have not been able to satisfy my own mind, and that is with respect to the position of a lieutenant-governor as a constituent element of a provincial legislature. The province has no jurisdiction to deal with that, and I would not imagine we have. It is a right of the provincial government to have its provincial government composed in a certain fashion. I believe any attempt to deal with that would be regarded as impinging upon something which was a right secured to the provincial constitution by the act.

There are other provisions. There is this provision about the freedom of entry of a product, natural or manufactured, of any province into any other province. That is not something which is a constitutional right of a legislature or of a government, it is something which is put there as a right of the Canadian people. Rightly or wrongly, we have always felt that, in respect of those matters which were not under provincial control, the people of a province were represented by those they elected to speak for them in this place. We have felt there is a distinction between what is meant by the legislatures and governments of a province, and what is meant by the general expression, "The province."

It has always been my hope, in looking towards this conference, that we could deal with problems in a manner that would bring about practical achievements, without having to be too much concerned with the method of reasoning of each one of us to arrive at the proper conclusion. I am sorry, Mr. Macdonald, that I cannot attempt to be more specific.

MR. DUPLESSIS: Since I believe the Prime Minister has directed some of his remarks at me, perhaps I should make certain points clear. We do not doubt for one minute the sincerity of the Prime Minister. We do not doubt for one minute his desire to do things in the best way he knows how. The disagreement arises as to the method of achieving what we all want.

Up to this moment, the conference has done a lot of good work. First, we have unanimity on the desirability of having a Canadian constitution, made in Canada by Canadians for Canada. Second, there was unanimity in arriving at a conclusion that the highest court in Canada should sit in Canada and be composed of Canadians, according to the spirit of the constitution.

Mr. St. Laurent now says that we are all in agreement that, in the matter of language and education, to mention only two in which the province has exclusive rights, there should be no change. What is the practical use of these rights if we have not the money to build schools, to pay teachers or to buy books? I contend it is important to consider this angle. We are not in heaven, but I hope we all go there some day. We are not in a hurry. Let us study and meditate carefully and thoroughly. We are on earth, and money is a necessity. Financial means and financial powers are indispensable to the full exercise of the rights which are conceded by everyone. Speaking for myself, I should say that I prefer the horse and buggy in which I can go where I have to go, to a Rolls-Royce without motor or any power. I believe the fiscal powers of the provinces are absolutely essential. A certificate of right, without the power to exercise it, is very nice to look at, but not very practical.

HON. DOUGLAS L. CAMPBELL (*Premier of Manitoba*): Mr. Prime Minister, I was going to refer once again to what the representatives of Manitoba suggested for consideration, because there seems to be almost complete unanimity of opinion that a method for amending the constitution should be found. In the first place, we should be devoting our time to a consideration of that method, and it seems to us that to get into the wider field of discussing individual amendments on their merits, or this other field which we agree is most important and on which a good deal of unanimity seems to exist, the domiciling of the

constitution within Canada, is only complicating the issue. We are inclined to suggest that more progress would be made if we were to confine our attention so far as possible to some principle. Perhaps we could take advantage of the unanimity of opinion which has already been expressed, and once again we could suggest the formula proposed by the committee of 1935 which you, Mr. Prime Minister, used in the House of Commons last session.

It may be possible for us to agree to endorse the principles contained there, and the divisions of the British North America Act under those headings. I believe they are exactly the same, although set up in another order and perhaps with less detail, as the ones that were presented this morning by Premier Frost and those presented in greater detail by Mr. Macdonald. If the conference would prefer to express an opinion in principle upon Premier Frost's suggestions, or Premier Macdonald's suggestions, then I think that would meet our wishes in the matter. We feel that greater progress would be made if we could now consider some general principles. I believe more rapid progress would be made, even though it might be horse and buggy style instead of the Rolls-Royce, than if we continue to give our attention to the matter of specific amendments or the wide question, important though it is, of having a fully Canadian constitution.

Now, Mr. Prime Minister, would it be worth while taking the feeling of the conference here as to an expression of opinion in principle with regard to the report of that committee as it is set out on page 27 of yesterday's report?

Mr. MACDONALD: What are those provisions? Some distinctions would be necessary. Looking at the bottom of page 27, I would ask, what are matters of concern only to the central parliament? That brings up the question which I endeavoured to raise a moment ago that the meaning of the phrase "constitution of Canada" could be taken to mean many things. It could be given a wide interpretation to include the statutes, case law and custom, or it could be narrowed down to something in the B.N.A. Act.

It is true that section 92 (1) of the B.N.A. Act says that the provincial legislatures shall have exclusive power to deal with certain things, among them the amending of the constitution of the province; that is clear. In asking the British parliament to pass the amendment calling for the amendment from time to time of the constitution of Canada by the parliament of Canada the dominion was only doing what the provinces already could do. I would point out in the first place that the powers of the provinces, as I apprehend the meaning of section 92 (1), only refer back to the two sections of the B.N.A. Act in the case of Nova Scotia, namely, sections 64 and 88 which set up the executive authority and the legislature of the province.

Section 64 says:

The constitution of the executive authority in each of the provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this act, continue as it exists at the union until altered under the authority of this act.

Section 88 provides that the constitution of the legislatures of the provinces of Nova Scotia and New Brunswick shall continue as it exists at the union, until altered under the authority of the act.

As I see it, when section 92 (1) speaks of amending the constitution of the province, the reference is back to sections 64 and 88 of the British North America Act. That is the meaning of "constitution" as used in section 92 (1).

To the argument that the dominion parliament is only seeking the same power the provincial legislatures now have with regard to amendment of the constitution, I should point out, I think, one difference which appears to me to be vital. That is that amendments made by any province to its constitution, to its executive authority or to its legislature, will have no bearing whatever

[Mr. Campbell.]

on any other province. My friend in Quebec has a Legislative Council as well as a House of Assembly. In Nova Scotia for more than one hundred years we also had a legislative council, which was abolished in 1926. Whether rightly or wrongly, the fact is that it was abolished by act of the legislature of Nova Scotia.

That act had no bearing whatever on the province of British Columbia. I do not think Mr. Johnson cares whether we have a bicameral or unicameral or tricameral or any other sort of legislature; that does not affect British Columbia. But I am afraid when you come to deal with the constitution of the Senate which specifically, from the beginning, has been selected on a basis provincial in nature, you are doing something that vitally affects the provinces.

Therefore there is a great distinction between saying to the provinces, "Oh, you have power to amend your constitution," and that the dominion is only asking the same power. I am afraid the fact is that when we exercise our power we affect only ourselves. By no stretch of the imagination can anything that we might do in Nova Scotia, in connection with our executive or legislative authority, affect Quebec or Ontario or British Columbia or any of the other provinces.

On the other hand when you come here as a federal parliament to change the constitution of the Senate, let us say, or the basis on which the Senate shall be selected—twenty-four from Quebec, twenty-four from Ontario, twenty-four from New Brunswick, Nova Scotia and Prince Edward Island, and so on—then you are touching something that I think is fundamental in our whole federal system.

Therefore, Mr. Prime Minister, with all respect I think there is a very great difference between giving the provinces the power to amend their constitution, in the sense in which that word is used in the British North America Act, to amend their legislative or executive bodies, and giving the dominion what is called a similar power. Of course if some procedure such as that set out in these documents were adopted the matter would become very simple. No matter what the dominion government intended or what a provincial government might intend, if something of this sort were introduced every section of the British North America Act would be placed in one category or another, and a method of amendment could be devised.

Mr. ST. LAURENT: That is what I meant a few moments ago in saying that we had no objection to considering having provisions in the documents resulting from our work here that are not now in the constitution there and that have not been there in the past.

Mr. MACDONALD: Quite so.

Mr. DUPLESSIS: I should like to state clearly for the province of Quebec that the fact that the constitution gives the provinces a limited right to change the constitution in the provincial matters, it does not give the federal government the same power. The Fathers of Confederation had good reasons of their own not to give this power to Ottawa. So when Ottawa is taking upon itself that right, it is taking a right which was refused at the time the constitution was drawn up. That may be a matter of opinion, but those are the views of the province of Quebec. The action of Ottawa in taking unto itself that right which was refused by the constitution is, if not exactly an encroachment—which might be too severe a word—at least a trespass.

Hon. J. R. SMALLWOOD (*Premier of Newfoundland*): Not to interrupt the flow of discussion but to settle a point which may be very simple but which frankly I do not understand, I should like to ask a question concerning the act bringing Newfoundland into union, Act No. 1 of 1949. Someone was saying here that it was not an act amending the British North America Act, that it was a separate act. As I understood it the British North America Act applies to Newfoundland. So does the British North America Act (No. 1) of 1949, more specifically. In working out a formula to amend the British North America Act, will that also mean a formula for amending the British North America Act (No. 1) of 1949?

Mr. ST. LAURENT: No. The British North America Act (No. 1) of 1949 was merely a confirmation of the terms of union agreed to and confirmed by dominion statute. There I do not think anyone could have any doubt that it is a compact between Newfoundland and the central authority representing Canada as it was before union. The terms are contractual terms that were agreed upon.

Mr. SMALLWOOD: But they are confirmed not only by the parliament of Canada but by the parliament of the United Kingdom.

Mr. ST. LAURENT: That is so.

Mr. SMALLWOOD: It is an act of the United Kingdom parliament. Would any formula finally accepted for amending the British North America Act, whatever it may be, give anyone the right to amend Act No. 1 of 1949?

Mr. ST. LAURENT: Not unless express provision was made for that purpose.

Mr. MACDONALD: It would be a matter you would have to agree to.

Hon. E. C. MANNING (*Premier of Alberta*): I should like to make a suggestion following what was proposed by the Premier of Manitoba; but first might I ask if you, Mr. Chairman, would clarify for us the present situation resulting from the enactment of the British North America Act (No. 2) 1949, concerning the first exemption contained in that amendment, which reads as follows:

—the amendment from time to time of the constitution of Canada, except as regards matters coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces.

I touched upon this matter yesterday. The wording there specifically refers to matters assigned exclusively to the jurisdiction of the provinces. The point I would ask you to clarify, if you would, is this. Does this mean that in matters of divided jurisdiction between the dominion and the provinces—for example, the field of agriculture, which I used as an illustration yesterday—the dominion parliament could amend its constitutional powers, as they relate to those matters that are the subject of divided jurisdiction as between the dominion and the provinces?

If the answer to that question is yes, would it not be true to say that by making such amendments the dominion could very easily completely alter the position of the provinces and the value of the authority of the provinces in that particular field of jurisdiction?

Mr. ST. LAURENT: Of course, Mr. Manning, I can only express an opinion which would not have any binding effect upon any court that might have to consider the question. I do agree with you that if the answer were yes it would have that effect; but I suggest that the answer cannot be yes, because there is not only the first exception. That first exception was designed to exclude all those classes of matters placed within the exclusive jurisdiction of the provinces, that is to say everything contained in section 92. The second

[Mr. Duplessis.]

exception is of everything that would impinge upon the right secured to a legislature or to the government of a province by any constitutional act. My opinion is quite firm that where there is jurisdiction under section 95, that is concurrent jurisdiction, there could not be any amendment that would affect the right the legislature has to concurrent jurisdiction under that section, because of the terms of the second exception in the 1949 No. 2 Act.

Mr. MANNING: I confess that as a layman I am not too clear on the significance of some of the legal phraseology.

It seems to me quite clear that the other exceptions contained in the provision present no problem, in that they are specific, but this first one, by reason of the fact that the word "exclusive" is there, would suggest to me that any matter which is not exclusively within the authority of the provincial legislature—but which is a divided responsibility between the dominion and provincial legislatures—would come within the category of matters concerning which the dominion parliament is authorized to make amendment.

Mr. ST. LAURENT: I quite agree that would be so if the clause stopped after the first exception but the right of the legislature in matters which are not exclusively placed within its jurisdiction is also protected in the second exception.

Mr. MANNING: If I may follow that a little further perhaps I could clear up the point.

I follow your answer, in so far as it relates to the specific matters enumerated in the remainder of the section, but again to take agriculture as an illustration, there is nothing in the balance of this section that refers to agriculture. The balance of the section refers only to the definite specific matters enumerated therein.

Mr. ST. LAURENT: The balance of the section refers in general terms to all the rights and privileges of the legislatures. Then, in addition, it refers to things which are not rights or privileges of the legislatures of the provinces, but which are rights or privileges of persons.

The general rights with respect to education are matters exclusively within the jurisdiction of the province with the proviso for remedial legislation in the cases enumerated.

These are with respect to rights secured to classes of persons, with respect to existing at the time those rights were crystallized, they are secured to classes of persons.

The second exception in the 1949, Number 2 Act, reserves the rights or privileges by this—that is to say the British North America Act—or any other constitutional act secured to the legislature or government of the province.

Mr. MANNING: Mr. Chairman, I wish to thank you for the explanation you have given and I take it from what you have said that the words in the amendment, "with respect to rights or privileges by this or any other constitutional act secured to the government of a province", would prevent the dominion parliament in itself amending a section of the constitution, dealing with matters in which it has jurisdiction, but where the province also occupies the same field.

Mr. ST. LAURENT: Yes, that is my firm opinion.

Mr. MANNING: Thank you very much, sir.

May I continue with the suggestion I made a moment ago. We have before us the submission of the premier of Manitoba that the conference might well, at

this stage, consider categories or classifications suggested in the 1935 report as a basis from which we could proceed to decide which particular matters within the British North America Act should be assigned to those respective categories.

Mr. CAMPBELL: There are also the suggestions made by Mr. Frost and Mr. Macdonald.

Mr. MANNING: Yes. We have a more detailed suggestion made by Premier Macdonald this morning which follows almost the same pattern, as far as categories are concerned.

Mr. CAMPBELL: Yes, and as well we have Mr. Frost's submission.

Mr. MANNING: Yes. I would like to say, as representing one province which has urged strongly that we should not divorce the broader question raised by Mr. McNair from the consideration of the method of amending the constitution, that we are quite in agreement with the suggestion that, as an initial step, we should proceed with this matter of the formula for amendment to the constitution without reference to the United Kingdom parliament.

I would like to suggest that we approve the categories referred to by the premier of Manitoba and then take the suggestions of the premiers of Ontario and Nova Scotia as a basis for a discussion of which specific matters should then be assigned to the four categories embodied in the 1935 report.

Hon. T. C. DOUGLAS (*Premier of Saskatchewan*): And we should deal with the committee's allocations.

Mr. ST. LAURENT: Would it be the wish of the conference to proceed in that manner?

I think everyone who has spoken so far has recognized that there are four categories. The question arises into which of the categories does such a matter fall. A little earlier I suggested to Mr. Duplessis, as I think everyone will agree, that the most important are the fundamental things which should not be dealt with except by the concurrence of parliament and the legislatures of all of the provinces.

The most helpful thing to do, I suggest, would be to consider if we are agreed upon the list of those fundamental things. Mr. Macdonald's suggestion indicates some of them, and it may be that we are all agreed that it contains all that should be included.

Should we not attempt, in dealing with the most important aspects first, to see whether we do agree that this or that item should go into the category that requires concurrent action of parliament and of all of the legislatures?

Hon. BYRON I. JOHNSON (*Premier of British Columbia*): Mr. Prime Minister, may I suggest that we deal with the first proposal contained in Mr. Macdonald's suggestion this morning.

Mr. ST. LAURENT: The fundamentals are in clause (d).

Mr. CAMPBELL: Yes.

Mr. ST. LAURENT: They are regarded as things of the utmost importance and things that should not be dealt with without the unanimous consent of the eleven legislative bodies.

Mr. DUPLESSIS: To my mind there is a very important paragraph omitted in No. 2, the means to exercise our rights—the financial power to exercise our rights.

Hon. LESLIE M. FROST (*Premier of Ontario*): I was just about to raise that point.

[Mr. Manning.]

Mr. Prime Minister, in the memorandum which we submitted this morning, in clause 1(d) we have the legislative jurisdiction of the provincial legislatures. Now I know that is a broad matter and actually we do include all of section 92. Our reasons for so doing are that when you look down section 92, taking subsection 1, there is the matter of amendment of the provincial constitution from time to time. It seems to me that is a definitely provincial matter. The second item is direct taxation in the province. For some of us that verges on being fundamental. Then No. 3 refers to the borrowing of money on the sole credit of the province. No. 4 is the establishment and tenure of provincial officers. No. 5 concerns the sale of public lands belonging to the province. I would not say that No. 6 is so very fundamental; perhaps we would be glad to hand over our prisons to someone else.

Mr. DUPLESSIS: There is not only the matter of prisons but there are the reformatory institutions which are very important to us.

Mr. FROST: I will say that No. 6 might not be so very fundamental. No. 7 has to do with the establishment of hospitals, asylums and charities.

Mr. SMALLWOOD: Down at this end of the table we feel that we have as much right to the pleasure of hearing Premier Frost and Premier Duplessis as you have at that end of the table. We cannot hear a word.

Mr. FROST: I apologize to Mr. Smallwood.

I was dealing with the various subsections of section 92 and giving reasons why, in our memorandum, we suggested this morning that those things should be counted as being fundamental to the provinces. No. 8 has to do with municipal institutions in the province; No. 9 covers saloons, taverns, auctioneering and other methods of raising revenue for the province; No. 10 has to do with certain local works and undertakings other than two exceptions. As we go on, No. 11 covers the incorporation of companies with provincial objects; No. 12 deals with the solemnization of marriage; No. 13, which I know is a big subject, deals with property and civil rights; No. 14 deals with the administration of justice; and No. 15 deals with the imposition of fines and penalties incidental to the enforcement of law. No. 16 is generally on matters of local or private nature; it seems to me that these things are really pretty fundamental to the provinces. We have felt that they should be included as fundamental. Remember, these things can always be dealt with by agreement. At the present time eight of the ten provinces have tax agreements with the dominion. They can do that. Two of the provinces have not. I do not think that the conference would suggest that by a constitutional amendment certain of the provinces that perhaps consider these things fundamental should be forced to accept a change which would alter their position very radically. That is the purpose of including all of 92 in the fundamental section. They are fundamental but you can always agree. The provinces themselves can agree with the dominion to do what they want to do with their powers. If there is any doubt one way or the other about the matter of delegation perhaps we should clarify it.

Mr. MACDONALD: Leave out Nos. 12, 13 and 14 and put the whole of 92 in?

Mr. FROST: That is right.

Mr. CAMPBELL: Is not the proper thing for us to do here at this time to agree on just the principles rather than immediately attempt to designate all the various sections that would come under the various headings? I think it would be better to deal first with the principles broadly. Then it would be the work of a continuing committee to recommend where the various sections should be fitted in. If we can agree on the principle cannot some committee perform this work better? I have the highest respect for the ability and reliability of the

Premier of Nova Scotia, but it would hardly be expected that in the limited time that he has had to give attention to this matter he could have arranged all these subjects in their proper category. If we agree on the broad principles—and I am sure that is the suggestion the Premier of Alberta had in his mind—we shall be making great progress at this time.

Mr. DUPLESSIS: The Prime Minister asked us to mention some fundamentals and that is what we are doing.

Mr. FROST: Mr. Prime Minister, this looks to be a very formidable task but actually it is not when you get down to dealing with the actual sections. Suppose the conference was agreeable to all of section 92 being treated as fundamental. That would pretty well clean up point No. 1 of the little memo that we gave this morning and it would also clean up a number of points in Mr. Macdonald's memorandum.

Mr. CAMPBELL: That would be all right with us, always on the understanding, Mr. Prime Minister, that the deliberations of today would not be final.

Mr. FROST: That is right.

Mr. CAMPBELL: We cannot be expected to dot every "i" and cross every "t" at this session.

Mr. SMALLWOOD: What do you mean by "fundamental"?

Mr. MACDONALD: All provinces would agree.

Mr. FROST: Yes.

Mr. MANNING: The distinction between (c) and (d) in Mr. Macdonald's memo, as I understand it, is that (c) deals with matters that might be classified as very important, and (d) with matters which can be classified as fundamental. I would suggest that if we were to move all of section 92 into (d) then the designation of "fundamental" loses its true meaning. These things are very important, but I think it would be going rather a long way to suggest that they are in the same category as matters that, generally speaking, we would properly regard as fundamental and as coming within category (d). If we were to take that position the Dominion Government undoubtedly would be quite justified in taking the position that all of 91 should come in the same category. I think it is getting away from the meaning of fundamental.

I would agree with the point raised by the Premier of Quebec that subsection (2) should quite properly be added to subsections 12, 13 and 14, as coming within the category of fundamental.

Mr. FROST: What I am concerned about is this. Take No. 5, Management and Sale of Public Lands. Management and Sale of Public Lands includes Forests, Mines and Oil. Perhaps my friend might consider oil fundamental. He has some things we would like to get.

Mr. MANNING: I would certainly agree it is very important.

Mr. FROST: There you are.

Mr. DOUGLAS: I think we have a clear-cut distinction between what is important to the economic and social life of a province and what is fundamental in terms of minority and civil rights. Surely, if we are to have a flexible constitution the part we are talking about now is going to be most inflexible and completely rigid. Surely in that limited field what we are trying to do is to safeguard certain minority rights and certain fundamental freedoms. It seems

[Mr. Campbell.]

to me if we cover such things as the use of the French and English languages and the matter of education which has very widespread ramifications, and the matter mentioned here, namely, the solemnization of marriage, and the administration of justice, that is about as far as we can go. When you get into the matter of including all of Section 92 even before leaving out subsection 13 which I shall mention in a minute, there are things we ought to look ahead to and see the possibility of. For instance, subsection 3 deals with the borrowing of money on the sole credit of the provinces. In the thirties there was considerable difficulty about borrowing money. It is conceivable that you might meet a situation where the provinces might want to delegate to the federal government certain arrangements for borrowing—

Mr. FROST: That could be done by agreement.

Mr. DOUGLAS: Only by unanimous consent.

Mr. FROST: No.

Mr. DOUGLAS: If you put all of Section 92 in that category it could only be amended by unanimous consent. That would mean one province, representing say one per cent of the population of Canada, or ten per cent of the population of Canada—

Mr. DUPLESSIS: No.

Mr. FROST: No. The point is you could not take away the right to borrow on the credit of the province from the province unless there was unanimous agreement. That would not prevent one province from making an arrangement with the federal government to borrow money. They could make their own separate arrangement; but you could not take the right away from the provinces across the board unless there was unanimous agreement. In other words, before you took away any of these rights from the provinces there would have to be agreement with the provinces.

Mr. DOUGLAS: I submit, Mr. Chairman, that these things which are basic to a provincial economy certainly cannot be classified as fundamental in terms of requiring unanimous consent. There are possibilities of enlarging provincial powers at the expense of the federal government, or enlarging federal powers at the expense of the provincial governments. It is quite conceivable that the majority of the provinces or two-thirds of them or whatever is agreed upon in the amending procedure, might want to transfer powers on a general scale, not merely by delegation, across Canada in order to bring about far-reaching social security measures which might be desirable. If you put all of 92 into the clause then you must have unanimous consent. It seems to me you are going to put the Canadian people in a straitjacket if you do that.

I especially want to mention again, as I did this morning, the question of 13 under 92, namely, property and civil rights. Certainly if that comes under the clause requiring unanimous consent it would postpone for many a day the making of many of the changes that are now being recognized as socially desirable, and which are now in effect in other parts of the world, such as contributory social security programs, national labour codes, and things of that sort.

Mr. MACDONALD: Property and civil rights are pretty fundamental provincial powers in the province of Quebec, for instance.

Mr. DOUGLAS: Yes, I grant that. In the west certain powers with reference to property and civil rights are also fundamental; but the interpretation of property and civil rights is now becoming so broad as to affect such things even

as contributory unemployment insurance. If this amendment were made giving the federal government that power it would affect social security contributory schemes and things of that sort. I notice that in 1935 the committee made a distinction between the two, giving to the provinces some guarantee. That part which dealt purely with the Quebec situation would stay with the province, and the other would be in the more flexible field. They outlined that on page 6 of the memo of the 1935 committee. It will be found on the second half of the page and reads: "Provided that if the amendment is in relation to matters coming within the classes of subjects enumerated in clauses (13) and (16) of section 92, or either of them, the legislature of any province, the legislative assembly of which has not approved or it is not deemed to have approved such amendment—" and so on.

Mr. MACDONALD: What is the beginning of the paragraph?

Mr. DOUGLAS: "Provided that."

Mr. CAMPBELL: I suggest that the difficulty we are now having in resolving our difference of opinion or approach to these minor matters, exemplifies how impossible a procedure it would be to try to fit all these sections into their proper places in anything like the time that is available to us. Once again I come back to the original suggestion, that if we could deal with principles only, leaving a committee to submit to us the detailed sections to be allocated to specific positions, we would make more progress. Probably after having looked over the submissions by Premier Frost and Premier Macdonald, both of whom have evidently given a good deal of thought to this matter, it might still be better to try to assert as a principle something quite close to that which was outlined by the 1935 committee.

Let us look at what that committee outlined. In respect of matters concerning the central government only, amendments might be made by passing an act of parliament. It would be for the committee to consider and report to the membership of this conference what those matters are. Undoubtedly, there will be some difference of opinion as to where they should be allocated, but if we could agree on the principle and tell someone to ascertain which sections should go into that class, I think it would be useful.

The second submission is, that in respect of matters concerning the central government and one or more but not all the provinces, the amendment might be made by an act of parliament and the assent of the legislative assemblies of each of the provinces affected. There again apparently there are not so many in that category, but a committee composed of the members of this conference itself or the delegates from the various provinces, could I think give us an authoritative indication of the sections which belong in that class. I do not think any of us would like to take the responsibility of saying here and now that we could cover all the things that would fall in that class.

The next submission is that in respect of a large number of matters concerning the central authority and all the provinces, the amendment might be made by an act of parliament and the assent of the legislative assemblies in two-thirds of the provinces representing at least 55 per cent of the population of Canada. This, of course, is a large field and the one which we are primarily discussing today. There are some who would perhaps feel that the two-thirds should be altered now, and it should be specifically stated by number since we have one more extremely valuable province following the date of that report. Perhaps the population percentage may not meet with general approval, but at least a principle could be enunciated that there be a certain number of entrenched classes which could not be dealt with except by act of parliament and the assent of all the legislative assemblies of the provinces.

[Mr. Douglas.]

From my observation of what has happened here, we are close to agreement on most of these principles. If it were possible to say so now, we could probably get a committee to work and, as a result of that, have something much more concrete to lay before the conference in a short time.

Mr. DUPLESSIS: Some time ago I read newspaper reports stating that the federal authorities had created a committee of experts to study our mutual problem and make suggestions. Perhaps this is mere conjecture on the part of the newspapers, but if it is true could we see those reports?

Mr. ST. LAURENT: I believe, Mr. Duplessis, that the newspapers were speculating. I have attended all the meetings of our committee, and I do not remember having my attention called to those reports. If the reports are as you have stated them to be, and I have no doubt they were, they were no doubt speculation and not founded on what has taken place in the committee dealing with this matter.

Mr. DOUGLAS: I agree with the idea of sending the matter to a committee eventually, because whatever decisions are made here will have to be put in legal terminology. I do not believe, however, that we can get away from what we are doing now. It is not sufficient to agree in principle that there ought to be four categories, whether they are labelled "important", "very important" or "most important" and "vital". The pith and substance of the matter is what to put in those categories. It seems to me that those are details that have to be settled, and they should be settled in a public forum. What goes into those categories is of tremendous interest to the people of Canada.

No doubt some cases are borderline cases, and those will have to be referred to the committee. Certain provinces may wish to reserve judgment on some of the borderline cases, but it seems to me that the main issue is what things will fall into the different categories. It seems to me that a discussion of that subject has to be continued for some time before the matter can be referred to a committee. What is more, I believe we will have to go over the whole series of proposals made by this 1935 committee, by Mr. Macdonald and by Mr. Frost in the memoranda they submitted this morning. One cannot be final about this.

There has been talk about entrenched classes. A moment ago Mr. Frost said the matter of borrowing might be a subject on which the province could delegate powers to the federal government or vice versa. It seems to me that is based on the assumption we are agreed that the delegation of power is something we will have to have. If we are agreed on the delegation of power, then we are able to take a different position when we come to talk about these different categories, because as we already know from the result of one or two court cases recently, the power to delegate powers and the power to receive delegated jurisdiction are two controversial questions.

I believe we ought to go over the various categories, as we are doing now, and discuss what ought to go into the entrenched classes, and matters which ought to go into the field of joint concern. It seems to me that is the way to do it, and the only way to do it. We cannot try to settle every detail, but we ought to agree on general principles, and then send the matter to a committee if we believe there is sufficient agreement to warrant doing so.

Mr. MANNING: I agree with much of what Mr. Douglas has said, with this exception: It seems to me that the question of just what should be placed in each of these categories is so important and so involved that none of us, as representatives of governments, is in a position at this stage to be definite as to just what the allocation should be. I would not favour merely setting up a committee and having that committee analyze the Act and recommend what the divisions should be. I feel rather that we would make better progress if the

conference set up such a committee as has been proposed, and let each government, dominion and provincial, make a thorough analysis of this whole matter. A submission could be prepared setting out clearly the matters allocated to these four categories, according to the way that particular government thinks is desirable. Then, that should be submitted to the committee. The committee would have the considered judgment and viewpoint of the dominion and all ten provincial governments.

If that were done, the committee might find that there was no disagreement on many of these sections. The disagreement would probably resolve itself into a limited number of points concerning the category in which certain subjects should be placed. At a future conference our discussions could then be concentrated on those particular matters on which there was disagreement as to the category in which they should be placed. Speaking for Alberta, I certainly would not favour merely turning the matter over to a committee. As a province, we want to make a thorough analysis of the whole B.N.A. Act, the various divisions under the act, and carefully consider the allocation of these matters as between those four categories in a manner that would be in the best interests of the country. I would suggest that should be done by all the governments concerned, their findings submitted to a committee for co-ordination, and then the differences discussed at a meeting of the conference.

Mr. CAMPBELL: I hope the premier of Alberta did not think my suggestion entailed turning this matter over to a committee which would have authority to act without referring the matter back to this conference. I would, of course, have assumed that the committee would be composed of representatives of each of the provincial governments, as well as the federal government. I approve of the suggestion of the premier of Alberta that the governments would maintain the closest liaison with the representative on the committee, and do exactly what he has suggested. This conference, of course, would have the final authority, subject once again to parliament and the legislatures.

Mr. FROST: I believe, Mr. Prime Minister, that there is merit in Mr. Campbell's suggestion and the suggestions of the two other gentlemen who have spoken. Perhaps if we were to agree upon the four or five principles, whatever the number happens to be, but I believe four have been mentioned in the memoranda filed, that would be some progress. We might add to that an additional class relating to the delegation of powers, following Mr. Macdonald's proposal. If, without getting into detail, we can determine what procedure would be followed in the matter of what we call, say, fundamentals, and the other classes here, perhaps afterwards we could see what things fall into those various classes. I believe that might be a method of dealing with the problem.

Mr. McNAIR: May I say a word or two on this subject? I note that the discussion centres almost entirely around the plan to amend the B.N.A. Acts, 1867 to date. I should like to point out that there are other acts for which we should also provide an amending procedure. I think that should not be overlooked. I have in mind the 1915 Act which was not an amendment to the British North America Act, although it contained provisions vitally affecting things that are in the British North America Act.

The other point I wish to raise at this time has to do with the necessary relationship between sections 91 and 92. As I recall my law, it is clear that the courts have decided that the entire legislative field in Canada has been divided, under those two sections, between the parliament of Canada and the legislatures of the provinces.

I am not so much concerned at the moment with any amendments affecting what is in section 92. I have in mind that any amendments to section 92 would

[Mr. Manning.]

be very limited; perhaps there would be none at all. The important thing is amendments to section 91, because every amendment to section 91 affects the content of section 92.

I need not argue that. It is not enough to say that the unanimous consent of the provinces will be required before an amendment can be made to section 92 affecting property and civil rights, because by amending section 91 property and civil rights may be very materially affected. So I think section 91 is the important section; and I throw that out as a suggestion for consideration.

I just want to say that, as has been stated, there is a wide field of operation on the basis of agreement between the federal authority and the provincial authorities, and we have seen that operate rather effectively during recent years.

Next, and last, I want to say that New Brunswick is vitally interested in the possibility of including in the British North America Act or in the constitution the right of the different legislative authorities to delegate power. You may recall that this was a rather important proposal advanced in the program which was under study during the last dominion-provincial conference of 1945. I think it has a great deal of merit to it, and I am entirely in accord with the suggestion that has been made that consideration be given to the possible inclusion in the constitution of the right to delegate power as between the different government bodies.

That is all I have to say just now.

Mr. MACDONALD: Then, Mr. Prime Minister, is there general agreement that some such division as suggested in my memorandum should be attempted?

Mr. ST. LAURENT: It was my understanding that it seemed to be the opinion of all that there were four categories. Then your memorandum suggested that there might be a fifth, because I take it that if an amending procedure is agreed to it should be just as carefully safeguarded as any other fundamental clause, and that it might very well be a part of the so-called entrenched provisions which could not be dealt with except by the joint action of parliament and of the provinces.

But I understood it was suggested that there might be a fifth category, which would include new matters. It occurred to me that probably the legal effect of that was that it could provide for taking out of the residual clause something that would be only in that residual clause, and making it a specific power of either the legislatures or of parliament. Because I think that, theoretically at least the pronouncements have been as stated by Mr. McNair, that the whole field be included in 91 and 92, though there may be parts that are only in the residual portion of section 91.

It seemed to be universally admitted that there would have to be these four categories and possibly also the fifth, or the fifth might be there as part of one of the others if it was not there as a separate category. It might be easier to get agreement on the basis that there would be five than if there were to be only the four and there was an attempt to have everything that might be covered by the broad interpretation of property and civil rights as an entrenched clause.

If that were so it would mean the situation would remain as in my opinion it is at the present time. In spite of what I have heard from the premier of New Brunswick and the other premiers, I have always felt that parliament could not take from the legislatures without their participation, something over which the act of 1867 had given them jurisdiction.

Mr. MACDONALD: Are you referring to section 92?

Mr. ST. LAURENT: Yes, under section 92; that to take from a province anything that has been placed under its jurisdiction is a matter over which the parliament of Canada has no jurisdiction.

That, of course, creates a very rigid situation. But it is a matter of equal concern to the representatives of the provincial governments and the representatives of the federal government, and I could not suggest that we should take away any jurisdiction without the consent of all those who have it. But if all those who have it agreed that they should allow it to be taken from them all if a certain number of them are willing, that is something which is within their jurisdiction.

Mr. DUPLESSIS: Provided it did not affect the other provinces.

Mr. ST. LAURENT: If the ten provinces were to agree that whatever seven decided would bind the ten, that would be their responsibility.

Mr. DUPLESSIS: We would not agree to that.

Mr. ST. LAURENT: I am not suggesting you would, sir. I am not suggesting that we have the right to ask that this be done. But otherwise it does create a very rigid situation, which possibly could be eased by having a specific subject dealt with possibly without the unanimous consent of the ten provinces. For instance, there was unemployment insurance, which was agreed to by the then nine existing provinces and which operates in spite of the broad construction sometimes placed upon property and civil rights, but which would not operate in spite of the broad construction placed upon property and civil rights if it had not been made an enumerated power of section 91. It may be that in future certain similar things can be done.

Mr. DUPLESSIS: As far as that goes it was never approved by the legislature. I am not discussing the point, but as a statement of fact it was never approved by the legislature of Quebec.

Mr. ST. LAURENT: No; it was approved by the governments of the various provinces, not by the legislatures. There are certain things which by the constitution have been placed under the jurisdiction of the legislatures and which they have the right to retain. Whether it is essential that they should individually retain all those rights is a question which they have to decide.

Now, with respect to section 92, some subsections could very possibly go into the category of things which require the consent of a province or of several provinces, which would affect only those that had consented. There are certain things which need not be uniform throughout the whole country but that it might be possible to have in this category, which provides that they be dealt with by parliament and by the legislature of the one or more provinces to be affected, and which would not operate outside the provinces which had participated in making whatever change had been accomplished.

That would probably affect some of these subsections of section 92. There are others which are of such a nature that probably the situation with respect to them should be the same throughout the whole country. I appreciate the suggestions made by the Premier of Manitoba and the Premier of Alberta; but there are certain fundamentals in connection with which the governments and legislatures of the provinces will have to take the responsibility of making a decision, and there cannot be any decision made for them by anyone but themselves. A committee might make suggestions; but a committee could not get very far unless it had some indication of what those who are going to have the ultimate responsibility want to have done.

Mr. DUPLESSIS: Then are there any definite proposals?

Mr. ST. LAURENT: No. I stated in opening that the federal government felt it was obvious that it would have a role to play in the amending procedure, and that it felt there should be appropriate participation by the provincial legislatures; and that it was desirous of having the responsible representatives indicate

[Mr. St. Laurent.]

what they felt would be appropriate participation. I think it might be regarded at least in some quarters as an impertinence for us to suggest that the provincial legislatures should be content with a certain degree of participation. I think it is their responsibility, and that in some quarters it might be regarded as an impertinence on our part to say that they should be prepared to agree to such or such a degree of participation.

Mr. DUPLESSIS: If I understand correctly this is a gathering in which we have representatives from the central authority and the provincial authorities, and the object of this meeting is to exchange views.

As far as Quebec is concerned, as I said before we are open minded, except that on fundamentals our opinion is firmly entrenched, for many reasons. But it seems to me that in a gathering of this importance and of this kind, everyone should feel free to offer suggestions without trying to impose anything on anyone else. I do not know; I may be mistaken, but the federal authorities may have some suggestions to offer. If I am not wrong that is the objective of this gathering. I do not think we are playing hide and seek. We are not, as far as Quebec is concerned, and we would be very much interested in having the views or suggestions of the federal authorities, because otherwise people might be inclined to think that the federal authorities had no opinions, which would be most unfair to such distinguished gentlemen as the Chairman and the Minister of Justice. As far as Quebec is concerned we would be very much interested in having friendly suggestions and opinions from the federal authorities, because I know the Minister of Justice would be the last one to play hide and seek.

Mr. MACDONALD: Why could we not put all of section 92, with the exception of 12, 13 and 14, in (d) for the moment, at any rate?

Mr. McNAIR: I do not know that I made quite clear what I was endeavouring to say. I do not think that section 92 is so important. I do not think we would find difficulty in the future if we did put section 92 in the most favoured or sheltered clause.

Mr. MACDONALD: All of it?

Mr. McNAIR: All of it. I think the important clause is number 91. Important changes in legislative jurisdiction could be brought about by amendment of section 91. The Prime Minister, a few years ago, instituted an amendment which vitally affected property and civil rights; that was the matter of unemployment insurance. I do not think that all of the provinces, even through their governments, agreed to that amendment but it was sought and obtained. The amendment was made to section 91 by adding another clause which materially affected the legislative authority of the province under section 92.

I think that the important thing is to consider a plan for amending section 91.

Mr. MACDONALD: Put both of them in the entrenched clauses.

Mr. McNAIR: If we put them both in that most sheltered provision of the Act we may find that we have put ourselves in a strait-jacket. We must consider that.

Mr. MACDONALD: No.

Mr. McNAIR: We must consider it. It has been stated here that we want to get the constitution in such a condition or so placed that there will be some elasticity and so that amendments, which time may prove desirable, can be brought about. There should be some flexibility in it. We want to keep that

feature in mind, I think, when considering these matters now under discussion—particularly the classifications where we would place particular sections as far as amendment is concerned.

I do not know whether we can get much farther today. I think we must reflect on this important problem; there will have to be consideration given as to how amendment of section 91 and section 92 can be brought about. I think, if we can get over that phase, we can proceed relatively quickly.

Mr. MACDONALD: Amendment to section 91 is to be by a majority of the House of Commons of Canada and of seven legislatures.

Mr. McNAIR: That is inconsistent with what you suggested with respect to 92.

Mr. MACDONALD: I do not think that there is any use in talking about taking property and civil rights out of section 92, in view of the attitude of certain provinces and the differences which exist in certain of their laws. Quebec, for instance, would never agree to that.

Mr. McNAIR: I have failed to make my point clear. I have never, for a moment, and I would not, suggest that property and civil rights could be taken out of section 92. I say that the subject matter therein could be very vitally affected by the inclusion of a new clause in section 91. According to Mr. Macdonald's suggestion the procedure should provide, with the consent of a number of provinces—not unanimous consent—that new provisions could be put in section 91 which could affect section 92.

Mr. DUPLESSIS: If you are going to amend section 92 in such a way as to have some effect on section 91, then you must consider both of them. It is important and essential that both be considered.

Mr. McNAIR: I do not think it is so important, with all respect, having in mind the language of section 91. I need not read it all but I shall quote a portion of the section:

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Inclusion of a clause under section 91 directly affects section 92 but I do not think that the reverse would apply.

Mr. DOUGLAS: Mr. Chairman, could we make some progress by selecting those items that we are agreed should go into the entrenched clauses, requiring unanimous consent for amendment. Let us leave the sections upon which we cannot agree for the moment and move on to the next category. There seems to be general agreement on the questions of language, education, solemnization of marriage, and administration of justice.

I certainly do not think that we can agree to putting all of section 92 in the entrenched clauses. I think that would impose a rigidity upon the constitution that would be awkward. That is particularly true if, as I say, we put all of subsection 13 in. It might, however, be possible to divide the section as suggested by the committee in 1935.

Could we dispose of those upon which we are agreed and then, when we have done that we can see what we have left over. We might then hammer out the different categories which we think those matters should fall into.

[Mr. McNair.]

Mr. ST. LAURENT: I have heard no one suggest objection to having included in the fundamental provisions the matters of education, languages, solemnization of marriage, and the administration of justice. There might perhaps be considered some qualification as to the life tenure of office of judges. It might be that some provinces would desire an age limit similar to the one which affects judges of the Supreme and Exchequer courts. There may be other provinces which prefer to retain the clause in the constitution securing the life tenure arrangement. I do not think that is something which would necessarily have to be uniform throughout the whole country. There has been for a number of years, a limitation—an age limit—in the Supreme and Exchequer courts and there have certainly been no repercussions elsewhere. Some provinces may say that they wish to have a similar age limit for the judges of their superior courts. The matter is something that I do not think would have to be uniform. I am not saying that it should not be uniform but I am saying that it is one qualification of the administration of justice that might be worthy of study.

My impression, from what I have heard, is that everyone agreed that the four matters which I mention should be in the entrenched position.

Is there anything else that should be in that category?

Mr. DOUGLAS: We suggested, in our presentation yesterday, that consideration might be given for inclusion of a maximum term for parliament and the calling of the session each year. While that does not directly affect the provinces, it does affect the people of Canada. The matter has been excluded by the federal government in the 1949 amendment.

Mr. PATTERSON: That provision is covered in the Nova Scotia submission.

Mr. DOUGLAS: Is representation by population covered?

Mr. PATTERSON: Yes.

Mr. JOHNSON: Item No. 50 relates to the term of parliament.

Mr. DOUGLAS: We wondered if there was a possibility of providing, amongst the entrenched clauses, some basis for representation by population. Unless some such basis were provided, it would be possible by redistribution to leave a province with a very small representation. I think, at present, Prince Edward Island has a guarantee of four members.

We had a feeling that probably some basis of representation might be put in as an entrenched clause so that it would not be possible, by enlarging the number of persons in a constituency in one province as against another province, to have one province more highly represented than another.

Mr. SMALLWOOD: There is one thing, Mr. Prime Minister, that might have been said in addition to the point touched on by Premier Douglas. Representation of a province in the House of Commons may not fall in number below the number of senators.

Mr. PATTERSON: That is provided for now.

Mr. SMALLWOOD: As an entrenched clause?

Mr. PATTERSON: It is in clause (c) and amendment would take a majority of seven provinces.

Mr. SMALLWOOD: In provinces such as Prince Edward Island, Newfoundland, —even Nova Scotia but certainly Newfoundland—it might be found that the population was drifting toward Upper Canada because of the greater population and developed resources in that part of Canada. We might find ourselves left with, for instance, half of our present population and representation, therefore, in the House of Commons would fall away to something much less than

it is now if the provision that the number of representatives might not fall below the number of senators were changed or could be changed, even without our own consent, by seven out of the ten provinces. I would like to see such a change possible only by a unanimous decision.

MR. ST. LAURENT: Would it be fair to take it, as a result of our deliberations, that there is no objection raised to entrenching: (1) educational rights; (2) language rights; (3) solemnization of marriage; (4) administration of justice, with the possibility of considering special arrangements for various provinces if they so desire; (5) a provision that the representation of the people of a province in the House of Commons would not fall below its representation in the Senate.

MR. DUPLESSIS: Oh I do not know about that. Before a recent amendment we had a guarantee of a minimum of sixty-five representatives in the House of Commons. So why should we accept twenty-four?

MR. ST. LAURENT: There may then have to be further consideration given to what would be a proper entrenched provision for representation in the House of Commons and representation in the Senate. Without being specific as to what the formula would be, it would be a formula designed to protect representation of the people of each province in both the Senate and the House of Commons on a basis that it is still a subject for further consideration. That is perhaps as far as the provisions of the subsections of 92 are not being considered. I understood Mr. Douglas to ask if we would try and ascertain how far we had reached up to the present time.

MR. MACDONALD: Would you mind running them off again? Section 92 (12), Solemnization of Marriage, and (14), Administration of Justice; 93, Education; 133, Language; 20 and 50, dealing with a meeting of parliament once a year and a five-year term.

MR. ST. LAURENT: Yes. There I think everyone would be agreed that that would be a proper provision with perhaps a proviso for a certain form of escape clause in case of emergency.

MR. SMALLWOOD: Mr. Prime Minister, Mr. McNair mentioned education. Education in Newfoundland does not appear at all in the British North America Act. It appears in the Act (No. 1) of 1949. This present discussion does not touch No. 1 of 1949 apparently. Where would that leave us with regard to our clause in 1 of 1949 on education or on anything else?

MR. ST. LAURENT: My understanding is that it would be educational rights whether they be in 93 of the original act or whether they be in the Manitoba Act, the Saskatchewan Act, the Alberta Act, or the Newfoundland Act. It would be education as it is now protected by any of these constitutional statutes. Do I take it that that is the general understanding?

MR. DUPLESSIS: There is something more besides that, namely, the right given under Section 92 and by the natural law.

MR. ST. LAURENT: I am not saying there is nothing more; I am just trying to summarize what up to the present time we have found ourselves in agreement upon.

MR. DOUGLAS: On the question of representation by population which is the new section 51 passed in 1946, if that were entrenched it would cover the question I have in mind.

[Mr. Smallwood.]

Mr. ST. LAURENT: My understanding was that there would be some entrenched provision for proper representation, but that there might have to be some consideration given as to what the right formula would be.

Mr. SMALLWOOD: Mr. Prime Minister, a moment ago you said something about an escape clause in connection with education but you did not pursue it.

Mr. ST. LAURENT: No, it was merely in connection with the requirement that there be a general election at least once every five years.

Mr. SMALLWOOD: What I would like to ask in connection with our clause on education is this. If it becomes, along with other clauses concerning other provinces in the matter of education, entrenched would there be any way in which under that scheme any given province desiring at any time in the future some change in that clause to make it by mutual consent between parliament and the legislature of the province concerned? Or is it entrenched in perpetuity, or does it mean the consent of all the legislatures or seven out of ten of them?

Mr. JOHNSON: Entrenched is all.

Mr. SMALLWOOD: Therefore if in half a century from now or a quarter of a century from now Newfoundland wished to have some change—it may be only a word or two—in its educational clause, to get that it would have to get the consent of the other nine provinces?

Mr. JOHNSON: No.

Mr. ST. LAURENT: I would not like to venture an answer without looking at the terms of union. It is my recollection that that matter was expressly provided for in the terms of union. I would not like to venture an answer without looking very closely at those terms of union; but it is my understanding that the present position, whatever it may be, with respect to education would be an entrenched provision without any modification as to what now is possible to be achieved in the way of change. I think that Section 92 is a matter for decision by the representatives of the provincial legislature. My own personal views are—they may not be correct; they may not be shared by very many—that that which is within their jurisdiction has to be dealt with by them.

Mr. CAMPBELL: Before we adjourn tonight can we not get an expression of opinion with regard to the proposal that the Premier of British Columbia, the Premier of Alberta, myself and, with reservations, the Premier of Saskatchewan and I believe some others, have supported that we might have a declaration of broad general principles on which we could start to work toward fitting in the various sections? So far as our province is concerned we would not consider it advisable to attempt to carry on as we are now and settle on these various sections without further conferences among ourselves. If that is the method that is decided upon by this conference then we will act with all possible expedition to present our suggestions as to where these various sections should go. But I once again make the proposal that the more beneficial way to proceed would be to settle first on the broad principles, and then let us fit into these broad principles the particular sections that seem to belong in certain categories.

Mr. FROST: Following up Mr. Campbell's suggestion may I suggest that at the present time we have four principles set out in different wording, namely, the wording of Mr. Campbell which refers I think to the 1935 conference. Then there is the wording that Mr. Macdonald submitted this morning, and there is the wording which I used this morning. Let us go away and see if we cannot

devise a wording that is satisfactory to ourselves, embodying these four principles, and adding to it the delegation provision; that is the fifth, and then see if tomorrow we cannot agree on the four or five provisions.

Mr. CAMPBELL: I think that is a good suggestion.

Mr. ST. LAURENT: Is it generally acceptable that there might be a delegation provision that would be of course optional and could be exercised only by each authority for itself, or is that something that some hon. gentlemen would prefer to think over over night. As I understand it a delegation provision would be merely a provision whereby by agreement between the federal authority and the province there could be delegation and acceptance of delegation for a time arranged between them but would have legal effect while it was in force.

Mr. MACDONALD: A statute?

Mr. ST. LAURENT: By statute, yes, but it would have legal effect while it remained in force.

Mr. DUPLESSIS: Provided that it did not affect the other provinces?

Mr. ST. LAURENT: No.

Mr. DUPLESSIS: That did not want the delegation?

Mr. MACDONALD: That is right.

Mr. ST. LAURENT: It would have to be something that had effect only between those whose legislative bodies agreed to it.

Mr. JOHNSON: May I suggest that an appropriate committee be set up, to do the thing that Mr. Frost suggests should be done. Mr. Frost refers to "we". Who are we?

Mr. FROST: Let us come back in the morning.

Mr. JOHNSON: I think it should be put in this way. When it is brought in tomorrow morning it should be in the form of an agenda that we can discuss. If there are to be three or four suggestions brought in and we start discussing them from different angles I am afraid we will not get anywhere. I made a suggestion this morning. It seems to me the proper thing to do would be to set up a committee and know who the committee is and who is to bring in the proposal so that we can deal with it and with it only when we start tomorrow morning. I make that suggestion for what it is worth.

Mr. DOUGLAS: I would certainly support that suggestion. If we start in tomorrow morning to discuss whether we shall take four or five categories we shall waste a considerable amount of time. If there was a small committee set up to deal with these matters that we have already dealt with, one of which is the entrenched clause, it could go on and enumerate other categories and decide on what provision we are all agreed on and so forth. If it is in order I would like to suggest that a committee be composed of Premier Frost, Premier Duplessis and Premier Macdonald to outline these categories and to put them in some terminology acceptable to them and put them before the conference tomorrow morning.

Mr. FROST: I was going to suggest that the committee consist of Mr. Macdonald.

Mr. DUPLESSIS: It seems to me that the suggestion is incomplete because Ottawa would have no representative on the committee.

[Mr. Frost.]

Mr. MACDONALD: There should be a federal member.

Mr. ST. LAURENT: If there is to be a committee it seems to me there should be a representative of each one of the governments on that committee. The committee might consist of the Attorney General of Canada and the Attorneys General of the provinces, or whoever each province would designate to act for the Attorney General of the province.

Mr. MACDONALD: Agreed.

Mr. ST. LAURENT: Would it be convenient for that committee to meet in Room 16 at ten o'clock? The committee would consist of the Minister of Justice and the Attorneys General of the provinces or whoever would be designated to act for each province? Could they meet in Room 16 at ten o'clock this morning?

Mr. MACDONALD: Are we meeting at eleven?

Mr. ST. LAURENT: We would like to meet at eleven if the committee felt that one hour would be sufficient for it to prepare and bring in the report.

Mr. MACDONALD: Make it twelve.

Mr. CAMPBELL: Do you think one hour is sufficient for a committee composed of eleven lawyers?

Mr. FROST: Make it 9.30.

Mr. ST. LAURENT: The Premier of Ontario suggests that we ask the committee to meet at 9.30 instead of 10, and that we meet at eleven. As the Premier of Ontario and I are not members of the committee, we raise no objection. Do we adjourn until 11 o'clock tomorrow morning?

At 5.30 the conference adjourned.

CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

THIRD SESSION, THURSDAY, January 12, 1950

MORNING SESSION

The conference convened at 12.50 p.m., Right Hon. L. S. St. Laurent in the Chair.

Right Hon. L. S. ST. LAURENT (*Prime Minister*): Gentlemen, is it your pleasure that the chairman of this committee which has been doing very important work this morning and has prepared a report, of which we now have copies before us, make its report?

Agreed.

Hon. STUART S. GARSON (*Minister of Justice*): Mr. Prime Minister and delegates: I am happy to read this report of the Committee of the Attorneys General of the Constitutional Conference of Federal and Provincial Governments. In so doing, I announce with extreme pleasure that it was a unanimous report.

Your committee recommends the following resolutions:

1. That the provisions of the British North America Acts 1867-1949 and other constitutional acts be grouped under six heads, namely:

- (1) Provisions which concern parliament only.
- (2) Provisions which concern the provincial legislatures only.
- (3) Provisions which concern parliament and one or more but not all of the provincial legislatures.
- (4) Provisions which concern parliament and all of the provincial legislatures.
- (5) Provisions concerning fundamental rights (as for instance but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amendment of the amending procedures.
- (6) Provisions which should be repealed.

2. That in respect of group (1) amendment shall be made by an act of the parliament of Canada.

3. That in respect of group (2) amendment shall be made by an act of the provincial legislature.

4. That in respect of group (3) provision be made for amendment by an act of the parliament of Canada and an act of the legislatures of each of the provinces affected.

5. That in respect of group (4) provision be made for amendment by an act of the parliament of Canada and acts of such majority of the legislatures and upon such additional conditions, if any, as may be decided upon.

6. That in respect of group (5) provision be made for amendment by an act of the parliament of Canada and acts of the legislatures of all the provinces.

7. It is recommended that the process of amendment in respect of categories (3) to (6) inclusive of paragraph 1 be capable of being initiated by one or more of the provincial legislatures or by the parliament of Canada.

8. In the opinion of this committee the subject of delegation of powers should be placed upon the agenda.

All of which is respectfully submitted. (Appendix V).

Mr. ST. LAURENT: It being within four or five minutes of one o'clock, gentlemen, would it not appear to be convenient that we take time to re-read this report and clarify our own thoughts about it. Perhaps we would then be better prepared to deal with it when we come back at three o'clock.

If it is convenient to adjourn until three o'clock, this meeting stands adjourned.

The conference adjourned at 12.55 p.m. to reconvene at 3 o'clock.

AFTERNOON SESSION

The conference resumed at 3:10 p.m.

Mr. ST. LAURENT: Gentlemen, we may resume from where we left off just before one o'clock; we had heard this unanimous report of the eleven distinguished gentlemen who worked on our behalf this morning. I have no doubt that each one of us has been interested in going over the report himself, and considering carefully the language in which each provision is expressed. I should like to enquire if there are any members who would wish to make any comments upon the form of this report, or can it be taken in the form in which it is, as accepted by the meeting generally?

I do not want to be precipitate, but may I take from the fact that there is no comment, that it is accepted generally by the conference?

Agreed.

I have considered the report with much gratification, and though it is quite unnecessary, I should like to express appreciation to those who constituted this committee for putting the report in such concise form. We must recognize, of course, that there are still matters, even with respect to those dealt with in terms in the report, about which the terms used are not absolutely precise and complete. It is understood that that is as far as it was possible for the eleven gentlemen who were at the meeting to agree to go at this time, and it would probably not be realistic to expect that, even by going over these paragraphs in detail, we would at this time reach any greater degree of precision than it was possible for the committee to agree upon.

This report does indicate the categories for the distribution of the provisions of the British North America Acts, 1867-1949. We realize, of course, that includes even those that were not, in form, amendments of any specific sections of the act of 1867. The other acts are all declared in their terms to be susceptible of description in a group as the British North America Acts, 1867-1949 inclusive. The categories are determined. The characteristics for each provision are set out in the headings of those categories. Again I say I believe it would be unrealistic to hope that we could all be prepared at this time to express definite views as to where any given provision should be placed in these categories.

[Mr. Garson.]

There are some provisions about which there can be no doubt. All those that are indicated as examples, are examples of what will be in those categories and will, themselves, be there. But with respect to the other matters there there may be some doubt.

Yesterday Mr. Manning stated twice, once at page 67 and again at page 87. that in his view the individual governments would want to have some time to give very serious consideration to the allocating of these matters to one category or another. He suggested that the most practical procedure might be the establishment of a continuing committee, with the understanding that each government would supply this continuing committee with its considered views as to the proper allocation of these various matters. After that is done, the conference should reconvene to try to harmonize the views that will have been formulated on behalf of each of the governments concerned.

I do not know whether or not those who are sitting around the table feel that we are apt, at this moment, to accomplish very much more, or whether it would be the view of the delegates generally that that would be the most practical next step to take. I am just calling attention to the suggestion that was made by Mr. Manning yesterday, and asking if it is the feeling of many or any of the delegates that it would be the appropriate time to deal with that suggestion.

Hon. T. C. DOUGLAS (*Premier of Saskatchewan*): I think we have already expressed our support of the idea of having a continuing committee. It would be merely a matter of deciding the nature of the personnel that would make up that committee. Our feeling was that it should probably be the attorneys general of the provinces with their advisers and whatever representatives the federal government felt ought to represent the dominion.

Mr. ST. LAURENT: I believe the dominion would be quite happy to be included in the term "attorneys general" and have as its representative the Minister of Justice, who is the attorney general of Canada.

Mr. DOUGLAS: I thought the dominion might want a larger representation. Whether or not the federal government desired to have some other members on the committee, in addition to the Minister of Justice, would be a matter for discussion. If the federal government felt the need of having one or more persons, there would be no objection from us.

Mr. ST. LAURENT: We would be quite happy to leave our fate in the hands of the attorney general of Canada, and rely upon the fact that he will, as will no doubt the attorneys general of the provinces, confer with his colleagues about these matters as they progress.

Mr. DOUGLAS: It seems to me that if such a committee were set up, of the attorneys general of the dominion and the provinces, with their advisers being allowed to sit in and probably with subcommittees having to be set up from that main committee, after the governments have given some study to this document they should be able to put forth the views of each government as to the allocation of the different divisions in whatever category they thought best, and see if they could find what basis there might be for agreement, and report back.

There is only one point, I think, would give us all some concern. In 1935, I believe it was, a committee of attorneys general was set up, whose report was quoted yesterday once or twice by some of the representatives here. I do not think that committee ever did report back to a dominion-provincial conference, and I believe we would want to make sure that did not happen again. I should think the situation now is so pressing that it would not likely happen. Certainly

we would be most anxious that such a report should be made as expeditiously as possible to another dominion-provincial conference called for the same purpose as this one.

Hon. MAURICE L. DUPLESSIS (*Premier of Quebec*): As a matter of record only, since the opening of this conference the understanding has been generally good but the hearing not so good, through no fault of the reporters or the staff to whom was given the arduous duty of trying to catch what was said. The acoustics of this chamber are not good; and I want to make it plain that I did not have time to peruse the reports; I only glanced through them. So as far as I am concerned I should like to verify the report, before accepting it as printed.

I think it might be well to remember that this great country of ours has many capital cities. I do not want to offend Ottawa by talking about capital, but we have many capital cities, and I am sure those capital cities would be pleased to receive the delegates to this conference, not to give the impression that the sun is rising only in Ottawa, which is a mistake. When confederation was under consideration many conferences took place; some in Quebec, where you would all be welcome, and some in the maritime provinces, and I believe that example should be followed now.

As far as Quebec is concerned we extend to each of you a cordial invitation. You will be welcome there.

Hon. BYRON I. JOHNSON (*Premier of British Columbia*): Perhaps I might express on behalf of British Columbia how we feel about the question of referring these resolutions to a continuing committee. I think we have already gone on record in that connection, but I should like to explain what I have in mind, as the leader of our government, and what I think the government would have in mind.

My understanding would be that we would take these resolutions back to our respective provinces and have a committee of our own government set up to find out what we think would fit into each resolution; then have that passed upon by our government and forwarded to the continuing committee. I am not quite sure whether that is what you have in mind, but that is the thought I had; that we would send in recommendations from our government to a continuing committee as to the things we had considered would fit into these different resolutions. As far as British Columbia is concerned, Mr. Prime Minister, we would concur in that.

Hon. ANGUS L. MACDONALD (*Premier of Nova Scotia*): Mr. Prime Minister, I think perhaps the sense of the committee might be expressed in a resolution which I have endeavoured to draft and which I think meets all the views that have been expressed this afternoon, as well as other views that have been expressed at other times. So with your permission, sir, I should like to read this resolution for the consideration of the conference. The language at all points may not be exact and parliamentary, perhaps not even grammatical in some cases, but you will understand that it was drafted rather hurriedly, since the committee reported shortly before one o'clock. The resolution is as follows:

"Resolved that this conference agree to:

- (1) The appointment of a standing committee representative of the dominion and of the provinces.
- (2) Presentation to this Committee, with the least possible delay by the dominion and the provinces of their views respecting the classification of each section of the B.N.A. Act, 1867, as amended, and all other constitutional acts of the Imperial parliament relating to Canada within the groups suggested.

[Mr. Douglas.]

- (3) The standing committee shall use its best efforts to harmonize the views of the Dominion and Provinces.
- (4) The committee shall, as soon as possible, report to the governments of the dominion and the provinces the results of its work.
- (5) The conference shall then re-assemble to determine finally the amending procedure."

I may say that I agree entirely with some views which have been expressed as to the importance of the provinces having time to consider what representations, if any, they desire to make. I have no doubt all the provinces, as well as the dominion, would like to make further representations based upon the discussions which have taken place here during the last two days. If those views were presented to some sort of continuing or standing committee representative of all elements here I believe certain matters would be found to be of common agreement; certain others would be found to call forth varying views. But if this committee could assemble all the views from the ten provinces and the dominion and do whatever might be done to harmonize them, then send to the provinces and the dominion the results of their deliberations, after which this conference might re-assemble at a time not too distant but on the other hand not too soon—say in the course of two or three months—then I think we would be in a much better position to come back here and devote our whole energy to devising the best method of amending the British North America Act.

MR. ST. LAURENT: Well, gentlemen, you have heard and seen the terms of this draft resolution proposed by the Premier of Nova Scotia. If anyone has any observations to make on the resolution I think we would be glad to have them made at this point.

MR. DOUGLAS: It has been suggested already that probably the attorneys general of the dominion and the provinces might constitute the membership of that committee. If that were incorporated in the motion it would avoid the necessity of having another motion, if that would meet the wishes of Mr. Macdonald, unless he has something else in mind.

MR. MACDONALD: That would be the natural selection. The only point is that all the provincial legislatures will be meeting shortly, and if this standing or continuing committee is to spend some considerable time in this work it might be difficult to have the attorneys general attend. Therefore I think we should leave to each province the choice of its representative. One province might be able to send its attorney general; another might want to send its deputy attorney general or some other person to present the viewpoint of that province. That is why it has been deliberately left open.

MR. SMALLWOOD: Would they meet in Ottawa?

MR. ST. LAURENT: I think they should determine that themselves.

MR. MACDONALD: Halifax would be glad to entertain them, or Charlottetown, the cradle of confederation.

MR. SMALLWOOD: Or. St. John's.

MR. DUPLESSIS: If Mr. Macdonald has no objection, sometimes there is importance in what appear to be small details. Would there be any objection to replacing the word "dominion" with "federal authorities"?

MR. MACDONALD: That is all right; "the federal authorities and the provinces." What do the federal people say?

Mr. ST. LAURENT: Oh, we are quite happy to be designated as federal authorities.

Mr. CAMPBELL: I am beginning to think there is some danger of Mr. Duplessis being appointed the federal representative.

Mr. ST. LAURENT: I am not sure we would not be happy to have him act on our behalf.

HON. DOUGLAS L. CAMPBELL (*Premier of Manitoba*): As far as our province is concerned I can assure you that we are appreciative of the excellent work this committee has accomplished. I am strongly in favour of this procedure, as I mentioned at some length yesterday; and I think the results have justified my optimism.

I would point out, however, that the report of the 1935 committee, which Manitoba's representative suggested for consideration, was advocated here as establishing certain principles. I think it should be clearly understood that it is the principle of allocation that is being decided at the present time rather than any final decision even in the acceptance of the report.

I notice that in paragraph 2 of the resolution Mr. Macdonald suggests in the closing lines, "all other constitutional acts of the Imperial parliament relating to Canada within the groups suggested." With all deference to the extremely useful work that was accomplished by that committee this morning, I suggest that we should not determine finally here that those should be the only groups into which sections of the act will be placed, because again I suggest that it is principles rather than details that should be decided at this conference. One example of that—and I confess that it was in the report of the committee which I laid on the table here for discussion—is the use of the expression "entrenchment." I have observed in the procedure or the development of our meeting that there seems to have been an indication of a growing tendency to entrench—that is the word we are using—more and more rights, privileges, responsibilities, etc.

I think that there is a danger of us entrenching, if we do not pause to look at that process very carefully, to the extent that we shall have a greater degree of rigidity than we would like to achieve here. Entrenchment, as we look at it, means protection primarily for the sake of a particular province or of any province with respect to certain rights or privileges which that province regards very highly. I refer there of course to the fundamental rights. I would think they would be best preserved by having the consent of the concerned province required but there might be a danger here, if we use the term and thought of entrenchment too widely, in that we would achieve too much rigidity.

I throw my suggestion out to the conference only to make it plain that we from Manitoba believe that the question would have to be gone over very carefully by the standing committee. I think the suggestion made, and the spirit of this resolution, is most helpful and it is something that we would be in favour of adopting.

Mr. MACDONALD: I think we could leave out the words "within the group suggested". It says "classification of each section of the B.N.A. Act." Just end the paragraph at the word "Canada."

Mr. ST. LAURENT: Take out the words which follow "within the group suggested"?

Mr. MACDONALD: "Classification" perhaps covers that.

Mr. ST. LAURENT: I think that is probably true. For the sake of expressing the appropriate idea would it not be well to add, at the end of clause 5 after the words "to determine the final amending procedure", the words "to be recommended to the several legislative bodies concerned"?

[Mr. Macdonald.]

Mr. MACDONALD: Yes, I think so.

Mr. CAMPBELL: Yes.

Mr. ST. LAURENT: To avoid any possibility of anyone being concerned about the use, at this time, of the term "Imperial parliament" should we not say "United Kingdom parliament"?

Mr. MACDONALD: Yes.

Mr. DOUGLAS: Should the word "four" be deleted from the last line? I believe that has been changed.

Mr. MACDONALD: We struck out the whole thing; we conclude the paragraph at the word "Canada."

Mr. ST. LAURENT: One of our advisers calls attention to the fact that there are constitutional documents relating to Canada in the form of orders in council and it is suggested that after the words "acts of the United Kingdom parliament" we add the words "or other constitutional documents relating to Canada."

Mr. MACDONALD: That is all right. I knew that it was not perfect in the beginning.

Mr. DUPLESSIS: You are not taking into account certain judgments of the privy council which are in favour of the provinces.

Mr. ST. LAURENT: The language "or other constitutional documents relating to Canada", is language which will not put any restrictions upon the standing committee.

With your permission, gentlemen, I shall now read the draft as it is modified in accordance with the suggestions that have been made.

Resolved that the conference agree to:

1. The appointment of a standing committee representative of the federal government and the provincial governments.
2. Presentation to this committee with the least possible delay by the federal government and the provincial governments of their views respecting classification of each section of the B.N.A. Act, 1867, as amended, and all other constitutional acts of the United Kingdom parliament or other constitutional documents relating to Canada.
3. The standing committee shall use its best efforts to harmonize the views of the federal government and the provincial governments.
4. The committee shall, as soon as possible, report to the federal government and the provincial governments the results of its work.
5. The conference shall then re-assemble to determine the final amending procedure to be recommended to the several legislative bodies concerned. (Appendix VI).

I suggest that we use the same expression in each of the clauses, "the federal government and provincial governments", so that there may be no suggestion that we intend something different in any clause. For the purpose of the record may it be taken that this is agreed to?

Agreed.

Mr. ST. LAURENT: For the efficient performance of the duties of this continuing committee it should be provided with a secretariat. Will it be the expectation of the committee that the secretariat should be provided by the federal government?

Mr. DUPLESSIS: The committee has been decided upon but it has not yet been formed, Mr. Prime Minister.

Mr. ST. LAURENT: I beg your pardon. I took it that Mr. Douglas' suggestion that the committee be composed of the attorney general of Canada—

Mr. DOUGLAS: Or their representatives.

Mr. ST. LAURENT: —and of each of the provinces or the representatives of the attorneys general was satisfactory.

Mr. DUPLESSIS: Correct.

Mr. FROST: With the attorney general of Canada chairman.

Mr. MANNING: And the secretary provided by the dominion government.

Mr. DUPLESSIS: Secretary chosen by the committee after it has been formed. At least it should have the power to appoint its own secretary.

Mr. ST. LAURENT: Mr. Frost has suggested that the same resolution contain the addition that the attorney general of Canada act as chairman. Is that agreed to?

Agreed.

Mr. ST. LAURENT: With respect to the secretariat, is it the desire that there be a meeting of the committee right away to choose a secretary or would it be agreeable to leave that to the chairman of the committee for the time being and have him get the views of the members of the committee as to how the secretariat should be composed.

Mr. DUPLESSIS: I do not know; it may not be a matter of great importance but there is some importance to it. If the committee is composed of ten provincial attorneys general and the federal attorney general the least we can ask for is that we select our own secretary. There is no special hurry about it. We can decide that tomorrow or the day after tomorrow.

Mr. ST. LAURENT: I am quite sure there will be no difficulty over that. It was only for the convenience of the committee so that there may be someone there immediately available. Would it be agreeable to have the gentleman who has acted as secretary to this conference continue to act until the committee determines what the form of the secretariat will be?

Mr. DUPLESSIS: Yes.

Mr. DOUGLAS: Are you finished with that item?

Mr. ST. LAURENT: I think so.

Mr. DOUGLAS: I want to raise one item. This morning the committee agreed to have placed on the agenda the question of the delegation of powers by the federal government to the provinces and from the provinces to the federal government. I assume that will be considered by the committee and by the conference when it meets again. However, there is a good deal of urgency with reference to the question of delegation by virtue of the fact that on a number of items, in one of which we are particularly interested, namely, the question of marketing, there has been some question raised in the courts as to the power either to delegate powers or to receive delegated powers. I think Nova Scotia had a case in the courts and our own province has had a case in which it was held there was no power to delegate jurisdiction. On the other hand the legal advisers whom we have tell us that there is a good deal of feeling among legal

[Mr. St. Laurent.]

authorities that there is power to delegate. It seems to me that there is not much point in our having a long discussion about it in committee and here as to whether or not we should provide for delegation of powers if the power to delegate already exists in the constitution.

I want to raise the question as to whether or not the federal government would consider a reference to the Supreme Court as to whether or not the power to delegate does exist on a two-way basis, both from the federal government to the provinces and from the provincial governments back to the federal government. It seems to me if that were clarified we would be in a better position to discuss whether or not there ought to be some procedure set up to give the power of delegation. If it exists at the present time we do not need to discuss it. If it does not exist then we know that there is need to discuss it to see whether or not some method could be worked out by which it could be done.

Mr. ST. LAURENT: Information has just been given to me by the Deputy Minister of Justice that there was a Nova Scotia case in which a decision was handed down, and that it is now pending appeal before the Supreme Court, and that the decision of the Supreme Court is apt to provide all the clarification that could be obtained even on a reference. But if it should develop that there were matters of serious consequence that were not cleared up by that decision I am sure the Minister of Justice would be glad to consider any representations you might wish to make to him, Mr. Douglas, about a reference to obtain further clarification, because I think it would be desirable to have as clear ideas upon that subject as possible when we do meet again.

Mr. DOUGLAS: We were under the impression that it was not going to the appeal court. When the dissenting opinion was handed down, which was very important, we felt a strong case was made and that it should go to the appeal court. If it goes to the appeal court that meets our request.

Mr. MACDONALD: Let it stand, then.

Hon. J. B. MCNAIR (*Premier of New Brunswick*): Mr. Prime Minister, at this point I want to say that New Brunswick is heartily in accord with the action that has been taken by this conference. However, for reasons which I have already stated I feel that we are just dealing with the fringes of a larger problem. In my view this convention could be made a great event in the history of our country, provided we follow the matter through to what I consider is its logical conclusion. I have been very much impressed with the atmosphere that has prevailed here. Over the years it has been my privilege to attend four Dominion-Provincial Conferences, including this one, called to consider major matters. This is the conference which has impressed me. I think we shall all leave our meeting here today with a feeling that we have got together at this time under conditions and in an atmosphere that speaks well for those who took part in it, and that it augurs well for what we are seeking to promote in this country, namely, goodwill, understanding, and may I say national unity.

I want to say again—and I do not want to repeat this to the point of becoming wearisome—that in my view what we have accomplished here, which is very important, is only one step in what should be our ultimate objective. I feel that our country must have, and before long, a constitution that is Canadian in every respect. It may be in the minds of some that the amending procedure which we are seeking to develop may result in producing for our country, through the operation of machinery, a Canadian constitution. For my part I fail to see how that result may be achieved.

We have a great opportunity at this time. This convention has shown, in my view, that statesmanship in Canada at this moment is at a very high level.

We have this added thing to encourage us, that whatever support or thinking in favour of a constitution of a purely Canadian nature is being suggested it is emanating from the provinces and not from the dominion alone. I think that is something perhaps different from what we have been confronted with in the past.

At this moment I do not want to refer again to the amendment which was sought and obtained last year because I expect that in any event that amendment to the British North America Act is going to be removed; but I do want to say, Mr. Prime Minister, that I fail to share with you the interpretation which you suggested yesterday that amendment might carry.

My main point in rising at this time was to suggest this. Having in mind that we shall be reconvening here at some time in the near future, in the recess serious thought be given by all of us to what I consider the larger task confronting us at this time, namely, the task of getting for our country a constitution which will be Canadian in every aspect. I assume that we shall shortly adjourn for the purpose of permitting this committee to do its work, and in due course we shall reconvene to consider what is in the original agenda. I think we should keep in mind the advisability of enlarging the agenda when we do get together again. I hope in the near future. I have heard considerable support of the suggestion which, on behalf of the government of New Brunswick, I advanced the other day. There has been considerable support for the suggestion that we should seek to develop a Canadian constitution, and set it up in this country as our own. I hope that on reflection the suggestion will receive even wider support than has been expressed here. I can see every reason for that development which, in the end, will mean that the Imperial parliament will relinquish in every respect the authority which, under the Statute of Westminster, it still retains to legislate in respect of Canadian affairs. In the interim, before we return here to resume our deliberations, much might be done to develop right across Canada support for that notion, and I shall be greatly surprised if we do not find that the public generally will support what I have suggested here at different times and which I am suggesting at the moment should be our ultimate objective.

In closing I again want to say I support wholeheartedly what this conference has done, but I consider it only one stage in arriving at what should be our ultimate aim, namely, a Canadian constitution.

Hon. E. C. MANNING (*Premier of Alberta*): Mr. Prime Minister and gentlemen, I should like to concur wholeheartedly in the remarks we have just heard from the premier of New Brunswick. I will not take the time of the conference to repeat for the sake of emphasis any part of what he has so ably stated; but I would like to draw the attention of the conference to this one point. In the report of the committee submitted to us this morning, and which was accepted by the conference, it includes as clause 8 the addition to the agenda of the matter of delegation of powers. We are wholeheartedly in accord with the suggestion that that subject be included on the agenda for consideration by the continuing committee and the conference when it reconvenes.

It might perhaps be suggested that the inclusion of this one specific item on the agenda, which is apart from the general subject of the formula for amending the constitution, means that there are no other matters being included on the agenda. In keeping with what Mr. McNair has just said, we as one province would certainly desire to keep on the agenda the whole question of redrafting the constitution to make it a wholly Canadian document adopted and ratified by the people of Canada through their respective parliament and legislatures or by such other procedure as might be adopted after full study and consideration. This larger, and in our view, even more important matter should

[Mr. McNair.]

be considered as being on our agenda for future consideration and not excluded by virtue of the fact we have, in adopting the report of the committee, agreed on what you might call a specific agenda for our work in the immediate future.

While speaking, Mr. Prime Minister, if I may touch upon another point, I should like to say that in your opening remarks on Tuesday, January 10, you made this statement which appears at page 10 of the *Hansard* report:

—The federal government does not intend to put forward any concrete proposal.

That remark referred specifically to a formula for amending the constitution. I certainly hope it will be the intention of the federal authorities, under the second clause of the resolution proposed by Mr. Macdonald and agreed to by the conference, to submit their views as to the procedure for amendment as has been suggested on the part of each of the provincial governments. I believe it would be extremely unfortunate if the federal authorities or any province should not submit a thorough analysis of the question and its considered opinion on the matter.

Before I sit down, I should like to make one further remark. Earlier, in discussing the work of the continuing committee, it was suggested that it might consider meeting elsewhere than Ottawa. Some reference was made to Quebec and possibly Halifax. Perhaps it would not be out of place for me to suggest that Edmonton, the oil capital of Canada, would be the proper place. Our oil admittedly is crude, but the people and the atmosphere of our province are highly refined and the committee will find a warm welcome awaiting it there.

Hon. J. R. SMALLWOOD (*Premier of Newfoundland*): Mr. Prime Minister, I believe my colleagues would like me to say how pleased Newfoundland is over the outcome of the conference. We have two reasons in particular for our pleasure. First, if it never happens again, at least today we are the equal of Quebec at this table.

Mr. DUPLESSIS: Yes, but there is no boundary line.

Mr. SMALLWOOD: I notice that Quebec has four of its distinguished sons sitting at the table. I would point out that Newfoundland has exactly the same number: The Secretary of State, the Attorney General on my immediate right, and on my immediate left, the *Hansard* reporter is a native of Newfoundland. We may never manage it again, sir, but we have today.

The other reason is that, if Premier McNair is right in saying that, in his experience, this has been the most harmonious, unified and happy dominion-provincial conference, then it fulfills the wish that we expressed on the opening day, that the first all-Canada conference should coincide with the presence at it of Newfoundland for the first time.

Mr. DOUGLAS: Mr. Chairman, in placing before the conference the views of Saskatchewan, I mentioned the larger picture and the conditions under which this conference is being held. I do not want to labour that at this late hour, but I do want to go back to what, to us, is the most essential thing facing the governments which we represent and the people of Canada.

When the Dominion-Provincial conference on reconstruction broke down in 1945 and separate tax agreements had to be made with several of the provinces, a number of very important questions were left up in the air. Amongst those questions were such matters as the care of unemployed being assumed by the federal government, the care of old age pensioners, health insurance and a public investment program to deal with unemployment whenever it appears. Those are questions which, in the opinion of the Saskatchewan delegation, are even more pressing now than they were when the conference was called back in August of 1945.

I am sure that every one of the provincial delegates has experienced, as we have, constant calls for help from municipalities who now have the responsibility of caring for the unemployed. In common with the other provinces, we are faced with the problem of people who are 65 to 70 and who are not able to get employment, but who are not old enough to qualify for old age pensions. It is a problem that demands some attention. Two of the provinces represented here, British Columbia and ourselves, already have a modified health insurance scheme in so far as it refers to hospitalization. The entire cost of that is, of course, being borne by the provincial governments concerned and the people of those provinces. So far as a public works program is concerned, no steps have been taken by the federal and provincial governments.

We are aware of the fact that the Prime Minister has announced that a conference will be held in September or October. We are glad that is to be done, but I think we would appreciate it greatly, and I am sure the other delegates would appreciate it, if now or in the immediate future the federal government could give us some idea of what we are to expect at such a conference. It is some months away and the problems we face are pressing. It would assist greatly in preparing our material for that conference if we knew exactly what the federal government is going to propose.

We do not expect the dominion to discuss now the terms of the new tax agreements that will have to commence on April 1, 1952. As I said before, however, we ought to know whether or not the 1945 proposals are likely to be again presented to the provinces, and whether or not those proposals will have to be accepted by all the provinces before they can become effective or whether they are going to be available to those provinces who are prepared to undertake their part of the responsibilities defined in those proposals. If we knew that, we would be in a much better position to plan for the fall conference. We would be in a much better position to plan our work at the coming session of the legislature. I do not think it is asking too much, on behalf of the provincial governments and the people of Canada who are vitally concerned about this problem of social security, to request some statement by the federal government. If it is not possible to do so today, the statement should be made long before the conference convenes next fall. The statement should cover all the matters that were left in abeyance as a result of the collapse of the conference on reconstruction.

We feel that those are matters which we ought to discuss while we are here, and upon which we ought to have some information. I think if we had a frank discussion now, we would be in a much better position to prepare for the conference to be held next fall and, consequently, the conference might prove more fruitful in its results.

Mr. JOHNSON: In case the conference is about to come to an end, I have already expressed British Columbia's views in connection with the results that have been obtained, I feel I should like to express to you, sir, as one who is attending his first dominion-provincial conference, my appreciation of the splendid manner in which you have handled this gathering. I am not suggesting the meeting is over, but in case it is, I should like to say, and I am sure I am expressing the view of all those around this table, that I appreciate the statesmanlike way you have conducted this conference. All those who are here have responded to the friendly manner in which you have approached the problem, and on behalf of British Columbia I wish to say that we appreciate it a great deal.

Mr. JONES: I should like to join with the others in expressing my opinion that the results of this conference have been extremely satisfactory. I want to compliment you, sir, on the way you handled the problem which, to some extent, I believe assured its solution. Other speakers have extended invitations to the committee to visit various cities, but I believe the claim of Charlottetown is a

[Mr. Douglas.]

strong one. We could provide the same room as that in which the Fathers of Confederation met, furnished as it was in 1864. If this conference were to be held as late as August, the delegates coming to Charlottetown would not only renew themselves in the vigour of our climate, but consummate the signing of the new constitution at that historic place. I heartily invite you to consider Charlottetown as the site. The legislatures will probably be in session until May, and I do not think there is any election pending, but perhaps in the fall there may be an election. Perhaps it would be a good idea to finish this job before the personnel of the present conference can be changed. I suggest that Charlottetown's claim be given consideration.

Mr. ST. LAURENT: Is there anything that any of the hon. gentlemen wish to bring before the conference before we adjourn? When we adjourn, I suppose it will be to such date as may be fixed by the committee set up to continue the work on which such substantial progress has been made at this time. I do not suppose we will be setting a date to reconvene, but that will be a date to be fixed by the continuing committee when it is in a position to report the results of its own work.

Mr. CAMPBELL: I take it we have agreed to accept the invitations that have been tendered?

Mr. ST. LAURENT: I am sure we would be most happy, not only to have the committee accept those invitations, but to have it include the rest of us as advisers.

If there is nothing more, all I would care to say in answer to the observations that have been made this afternoon, is that they will certainly receive careful consideration by all those for whose ears they were intended. I wish to thank the gentlemen who have attended this conference, on my own behalf, for having made it so easy and so agreeable for me to occupy this seat in which I find myself at this moment. I do not think any of us expected we would be able to reach final conclusions on this first occasion.

Personally—and I should hope that would be the feeling of all those who attended the conference—I do not think there is room for disappointment as to the extent of the accomplishment we have achieved up to this moment. And I would say to the premier of New Brunswick that I hope we will not stop taking forward steps until we have fully achieved the objective of having a constitution domiciled in Canada and subject only to the action of authorities responsible to the Canadian people.

We have been moving forward for eighty-three years. I think it is legitimate for us to hope that our forward movement is not going to be stopped nor slowed down, and that we may be among those who will have contributed materially to the establishment of that constitutional system which Canadians will continue to enjoy and in which from generation to generation I hope there will be ever-increasing reason to take pride, and to which there will be ever-increasing reason to feel the most steadfast loyalty.

I understand that all the gentlemen participating in the work we have done this week have been invited—and I hope they all intend to accept the invitation—to a reception which will be held at another place before the close of the afternoon. I am sure it will give us all great pleasure to exchange personal expressions of appreciation for the sort of collaboration we have received from each other on this occasion.

Do I gather that you wished to say something Mr. Macdonald?

Mr. MACDONALD: I do not wish for a moment to interrupt the happy flow of your speech or the delightful manner in which you have expressed what I am sure

is in the hearts of all of us. It just occurred to me, however, that in September or October there is to be another conference on another matter; therefore the element of time becomes of some importance.

I have been wondering whether some agreement should be reached here as to when this continuing or standing committee should first assemble. The chairmanship is in the very capable and able hands of the Minister of Justice and Attorney General of Canada; but on the other hand nominations to the committee, with respect to ten of the members at any rate, have to be made by the provinces. So I am wondering whether we should not agree on some time limit within which we should have those nominations in the hands of the chairman, and perhaps some time for the committee to meet, as I have no doubt that their deliberations will cover a considerable period of time.

Then, according to the resolution which has been adopted, they have to forward their conclusions to the provincial governments, which in turn will want some time to consider them. They then will make known their views to the continuing committee, and after that this general conference will have to re-assemble. So I should think that if at all possible the preliminary steps should be taken very shortly.

MR. DUPLESSIS: Mr. Prime Minister, if I were to pay you a compliment I am afraid so many people would be shocked that some of them might die; and on the other hand it would hurt your humility. So, in order to save lives and to safeguard your modesty, I will only express to you in the name of the province of Quebec our sincere thanks for your courtesies during this conference. We are very happy because the courtesies which have been extended to all the delegates during this conference represent one of the outstanding qualities of the province of which you are a distinguished son.

MR. ST. LAURENT: Mr. Premier Macdonald, I had understood this resolution to mean that the continuing committee would not need to meet until it had received and was in a position to pool the considered views of the several governments concerned. If that is so it might be difficult to attempt to fix a deadline for the production of those considered views. I would hope that the spirit which has been made manifest here and which has enabled us to make progress would compel us all to put forth our best endeavours to have the views of our respective governments made available at the earliest possible moment, and that we would all consider it to be something that should be treated as deserving of a high order of priority in our multifarious public duties. I do not know, however, that it would be possible to fix a deadline for the production of those views.

HON. LESLIE M. FROST (*Premier of Ontario*): Perhaps it would be possible for the attorneys general to meet for a few minutes this afternoon and make arrangements concerning the secretariat. That, I think, would get the committee organized. Later on, at subsequent meetings, if the attorneys general cannot attend they can have their nominees attend, and that would get the matter going.

SOME DELEGATES: Agreed.

MR. ST. LAURENT: I understand there has been a suggestion that this meeting might be deferred until tomorrow morning. I do not suppose it is a matter that would require very long to determine. Perhaps immediately after we rise the attorneys general, or whoever may be deputed to act for them, would meet with the Minister of Justice in room 16 and try to determine those details which will bring about expedition in dealing with this important subject.

I think the feeling of each of us at this time would justify closing this meeting by the singing of both O Canada and God Save the King.

Whereupon at 4.30 p.m. the conference concluded with the singing of O Canada and God Save the King.

[Mr. Macdonald.]

APPENDIX I

The following is the English translation of speeches delivered in French on the date indicated.

TUESDAY, January 10, 1950.

Right Hon. L. S. ST. LAURENT: I wish to repeat, in French, that I consider it a very pleasant duty to welcome the premiers of the ten provinces of Canada, their cabinet colleagues and other representatives of the provincial governments, to this conference in Ottawa.

It is our hope that this will prove to be an historic occasion. It is the first occasion since Confederation that a conference has met for the exclusive purpose of considering the constitution of our country.

The conference is historic in another sense because it is the first Dominion-Provincial Conference to be held since our country achieved the full geographic limits envisioned by the Fathers of Confederation. I am sure I speak for the representatives of the nine older provinces, as well as for the federal government, when I extend a special welcome to the Premier of Newfoundland and his colleagues from that province.

The purpose of this conference is to seek together to devise a generally satisfactory method of transferring to authorities responsible to the people of Canada the jurisdiction which may have to be exercised, from time to time, to amend those fundamental parts of the constitution which are of concern alike to the federal and provincial authorities.

There will no doubt be substantial differences of view today, as there were in 1867, as to how best to serve the common needs of a single nation stretching across half a continent. Eighty-three years of Confederation have greatly strengthened the sense of unity and common interest of the Canadian people, but differences still exist and are still important, and differences must be respected if we are to achieve a satisfactory solution of our constitutional problem, and, indeed, of all our national problems.

I would go further, and suggest that it is not merely necessary for us, in devising any amending procedure, to recognize as facts, the differences that do exist between the attitudes, the views and the ways of life of different provinces and different parts of Canada; it is, I believe, of the utmost importance that we should fully appreciate the values that these very differences have in enriching our national life.

Hon. MAURICE DUPLESSIS (*Premier of Quebec*): Honourable prime ministers and members of the delegations, I believe it is fitting that the first words spoken by the representative of the province of Quebec at this very important conference be spoken in the French language, the language of the province of Quebec, the mother tongue of the French Canadians.

We are convinced that the Canadian confederation did not confer any rights in the matter of languages; it merely acknowledged them, for the rights of the French language were asserted, acquired, and confirmed long before the British North America Act.

At the beginning of this year, it is a pleasant duty for me to extend to all our best wishes for a happy new year.

I believe it is proper, at the very outset of this vitally important conference, that the attitude of Quebec be clearly established, in order to remove any serious and reasonable doubt.

The province of Quebec favours absolutely a Canadian court, composed of Canadians, sitting in Canada and dealing in last resort with Canadian matters in accordance with the spirit of the federate pact. The province of Quebec is fully in favour of a constitution which would be essentially Canadian, which would have been developed and enacted in Canada, for the Canadian people and by the Canadian people and which would be based upon the federative spirit and the very soul of the British North America Act of 1867.

I say those things at the very start, so as to avoid any disagreement or misunderstanding. I believe that more than ever, if possible, frankness and loyalty should preside over this conference. Frankness and loyalty are fundamentally essential to a properly understood national unity and constitute an indispensable basis for the maintenance of prosperity in the country and the provinces.

I am not taking part in this conference as chief of a party; nor do I consider here the Prime Minister of Canada as chief of a party, but I shall work during the conference as the Prime Minister of the Province of Quebec and I consider that, at this conference, the Right Honourable Mr. St. Laurent is the Prime Minister of Canada. We are anxious that all questions should be considered and decided upon in the light of these principles. We are of the opinion that political partisanship of any kind has no place here and that here, if anywhere, a healthy and fruitful patriotism must preside.

We believe that, at this time, it is advisable to make certain amendments to the Constitution of Canada, but it is our unshakeable belief that it is indispensable to respect the soul of the Canadian Constitution. We believe that, during this conference, the whole constitutional question should be considered, not only that part which the federal government will submit to the consideration and the decision of the delegates but even that very important part which was recently unilaterally decided upon by the federal Parliament. We believe that the Canadian Constitution is one and, in our opinion, the only way of respecting it is to respect its unity, to respect the foundations of its unity.

Without directing any criticism towards anyone, and in all fairness, we believe that it is not reasonable and that it is against the best interest of national unity, which we desire, for the federal authorities, a party to the federative Act, to assume the right of choosing arbitrators who will be called upon to decide the respective rights of each of the parties. This we consider to be completely contrary to British fairplay, on which are based the fundamental principles of the federal system of government.

We want to co-operate for the greatness and prosperity of Canada and of the Provinces, but in a spirit respectful of each party's rights. As we understand it, the Constitution contains secondary clauses, which are much less important, but it also contains basic clauses, such as those pertaining to language, religion, education, civil rights, and rights of ownership, regarding which no compromise is honestly possible, and the Province of Quebec does not intend to be, and cannot be, directly or indirectly, a party to such compromise.

We are here with our hands wide open, not in order to yield or to surrender our rights but to give to the delegates the occasion of working together for the greatness and the prosperity of the country and the provinces, while respecting integrally the basic rights of everybody.

APPENDIX II

FEDERAL REPRESENTATIVES

Members of the Cabinet Committee—

Right Hon. L. S. St. Laurent—Prime Minister
 Hon. Stuart Garson (Chairman)—Minister of Justice
 Hon. Brooke Claxton—Minister of National Defence
 Hon. Paul Martin—Minister of National Health and Welfare
 Hon. F. G. Bradley—Secretary of State
 Hon. Hugues Lapointe—Solicitor General

Advisers—

Mr. N. A. Robertson—Secretary to the Cabinet
 Mr. F. P. Varcoe—Deputy Minister of Justice
 Mr. Charles Stein—Under-Secretary of State
 Mr. P. M. Ollivier—Joint Law Clerk, House of Commons
 Mr. D. W. Mundell—Department of Justice
 Mr. E. A. Driedger—Department of Justice

Secretariat—

Mr. R. G. Robertson—Privy Council Office
 Mr. Paul Pelletier—Privy Council Office
 Miss Muriel Ann Mosley—Secretary of State Department

PROVINCIAL REPRESENTATIVES

Ontario—

Hon. Leslie M. Frost—Premier
 Hon. Geo. H. Doucett—Minister of Highways and Public Works
 Hon. Dana Porter—Attorney-General and Minister of Education
 Col. L. R. McDonald—Deputy to the Prime Minister and Secretary of the Cabinet
 Mr. C. R. Magone—Deputy Attorney-General
 Mr. Chester S. Walters—Deputy Provincial Treasurer and Controller of Finances
 Mr. H. A. Cotnam—Provincial Auditor
 Mr. George E. Gathercole—Assistant Provincial Statistician
 Prof. W. P. M. Kennedy

Quebec

Hon. Maurice Duplessis—Premier
 Hon. Onésime Gagnon—Provincial Treasurer
 Hon. J. S. Bourque—Minister of Lands and Forests
 Hon. Antonio Barrette—Minister of Labour
 Hon. Paul Sauvé—Minister of Social Welfare
 Hon. Patrice Tardif—Minister without Portfolio
 Hon. Antoine Rivard—Minister without Portfolio
 Mr. Emile Tourigny—Chef de Cabinet of the Premier
 Mr. Georges Shink—Comptroller of Provincial Revenue
 Mr. Roger Stanton—Assistant Comptroller of Provincial Revenue

Nova Scotia

Hon. Angus L. Macdonald—Premier
Hon. M. A. Patterson—Attorney-General and Provincial Secretary
Dean V. C. MacDonald—Dalhousie Law School
Mr. John A. Y. MacDonald—Deputy Attorney-General
Mr. Innis G. MacLeod—Departmental Solicitor

New Brunswick

Hon. J. B. McNair—Premier
Hon. J. G. Boucher—Provincial Secretary-Treasurer
Hon. W. S. Anderson—Minister of Public Works
Hon. S. E. Mooers—Minister of Labour
Hon. R. J. Gill—Minister of Lands and Mines
Hon. A. J. Doucet—Minister of Industry and Reconstruction
Mr. E. B. MacLachy—Deputy Attorney-General
Mr. J. Edward Hughes—Counsel, Department of the Attorney-General
Mr. Harry W. Hickman—Senior Solicitor, Department of the Attorney-General

Manitoba

Hon. Douglas L. Campbell—Premier
Hon. J. O. McLenaghan—Attorney-General
Hon. C. Rhodes Smith—Minister of Education
Mr. A. A. Moffat—Deputy Attorney-General
Mr. R. E. Moffat—Economic Adviser to the Manitoba Government

British Columbia

Hon. Byron I. Johnson—Premier
Hon. G. S. Wismer—Attorney-General and Minister of Labour
Hon. Herbert Anscomb—Minister of Finance
Hon. W. T. Straith—Minister of Education
Mr. J. V. Fisher—Deputy Minister of Finance
Mr. H. Alan MacLean—Assistant Deputy Attorney-General
Mr. Percy C. Richards—Executive Assistant to the Premier

Prince Edward Island

Hon. J. Walter Jones—Premier
Hon. A. W. Matheson—Minister of Public Health and Welfare
Hon. J. Wilfrid Arsenault—Provincial Secretary
Hon. W. E. Darby—Attorney and Advocate-General
Mr. J. O. C. Campbell—Treasury Counsel

Saskatchewan

Hon. T. C. Douglas—Premier
Hon. C. M. Fines—Provincial Treasurer
Hon. J. W. Corman—Attorney-General
Mr. T. H. McLeod
Professor F. R. Scott
Dean F. C. Cronkite
Mr. J. W. W. Graham

Alberta

Hon. E. C. Manning—Premier
Hon. L. Maynard—Attorney-General
Mr. H. J. Wilson—Deputy Attorney-General
Mr. J. J. Frawley—Counsel

Newfoundland

Hon. J. R. Smallwood—Premier
Hon. Herman W. Quinton—Minister of Finance
Hon. Leslie R. Curtis—Attorney-General
Hon. W. J. Keough—Minister of Fisheries and Cooperatives.

APPENDIX III

Draft Resolution Submitted by the Attorney-General of Nova Scotia to the Committee of Attorneys-General—January 12, 1950

It would appear from the discussions of this conference that it is desirable to devise some method whereby the B.N.A. Act 1867 as amended and other constitutional Acts of the Imperial Parliament relating to Canada, may be amended in Canada.

It would also appear that the amending procedure should provide four groups or classes of provisions.

The Committee would therefore recommend that all sections of the B.N.A. Act 1867 as amended and other Constitutional Acts of the Imperial Parliament relating to Canada be divided into four groups as follows:—

Group 1—Those sections would concern the Dominion only. In this group would be placed such sections as:

11. Relating to Privy Council for Canada;
14. Relating to the power of His Majesty to authorize the Governor General to appoint deputies;
18. Relating to the privileges and so forth of the Senate and House of Commons and other sections.

This group of sections would be amendable by Act of the Dominion Parliament alone.

Group 2—Those sections would concern the Dominion and one or more but not all of the Provinces. In this group would fall such sections as:

124. Relating to lumber dues in New Brunswick.

This group of sections would be amendable by Act of the Dominion Parliament upon the request or with the subsequent confirmation of the Legislature or Legislatures of the Province or Provinces concerned.

Group 3—Those sections which are of concern to the Dominion and all the Provinces but do not relate to Fundamental Rights, so called. In this group would fall such sections as:

96. Appointment of Judges. This group of sections would be amendable by Act of the Dominion Parliament passed by an absolute majority of each House and upon the request or with subsequent confirmation of seven Provincial Legislatures.

Group 4—Those sections would concern Fundamental Rights, so called. In this group would fall such sections as:

93. Relating to education.
133. Relating to use of English and French languages.

This group of sections would be amendable by Act of the Dominion Parliament upon the request or with the subsequent confirmation of all the Provincial Legislatures.

It is suggested that the sections relating to the methods of amendment should fall within Group 4.

It would also appear proper to provide that upon the request of the appropriate legislature or legislatures for the amendment or repeal of a section classed in groups 2, 3 or 4, the executive Government of Canada shall within one year present to the Dominion Parliament a Bill providing for the same.

The Committee would also recommend that a section be added to provide for the delegation by statute of legislative powers for specific periods from the Dominion to a Province, and vice versa.

If a method of amendment covering all sections of all constitutional acts is adopted, Section 91 (1) as enacted by the B.N.A. (No. 2) Act 1949 would be inoperative and that Act should be repealed.

If the foregoing proposals are acceptable, the Committee would recommend the following further steps:—

- (1) The appointment of a Standing Committee representative of the Dominion and of the Provinces.
- (2) Presentation to this committee, with the least possible delay by the Dominion and the Provinces of their views respecting the classification of each section of the B.N.A. Act 1867 as amended, and all other constitutional Acts of the Imperial Parliament relating to Canada within the four groups suggested.
- (3) That the Standing Committee use its best efforts to harmonize the views of the Dominion and Provinces.
- (4) That the Committee should, as soon as possible, report to the Governments of the Dominion and the Provinces the results of its work.
- (5) That this conference should then re-assemble to determine finally the amending procedure.

APPENDIX IV

Draft Resolution Submitted by the Attorney-General of Manitoba to the Committee of Attorneys-General—January 12, 1950

A conference of the representatives of the Federal Government and of the several Provinces having convened in Ottawa on January 10, 1950, for the purpose of devising a method whereby the Canadian Constitution will be amended within Canada, and a substantial measure of agreement having been reached as to certain principles which would be applied in working out the procedure for amendment;

And the conference having decided it would be expedient to enunciate these principles;

This conference agrees on the following principles as a guide in formulating the procedure for amendment:

1. That the provisions of the British North America Acts 1867-1949 be grouped under four heads, namely:

- (1) Provisions which concern the central government only.
- (2) Provisions which concern the central government and one or more but not all of the provinces.
- (3) Provisions which concern the central government and all the provinces.
- (4) Provisions which for the purpose of convenience are called provisions relating to special rights or privileges, and without attempting to set these out exhaustively, include those provisions relating to language and education, free entry of goods as between the provinces and amendment of the amending procedure.

2. That in respect of group (1) provision be made for amendment by an Act of the Parliament of Canada.

3. That in respect of group (2) provision be made for amendment by an Act of the Parliament of Canada and an Act of the Legislative Assemblies of each of the Provinces affected.

4. That in respect of group (3) provision be made for amendment by an Act of the Parliament of Canada and Acts of a majority of the Legislative Assemblies of the Provinces.

5. That in respect of group (4) provision be made for amendment by an Act of the Parliament of Canada and Acts of the Legislative Assemblies of all the Provinces.

6. That provision be made for delegation of legislative powers of Federal and Provincial Governments to one another.

APPENDIX V

*Report of the Committee of Attorneys General to the Constitutional Conference
of Federal and Provincial Governments*

Your committee recommends the following resolutions:

1. That the provisions of the British North America Acts 1867-1949 and other constitutional acts be grouped under six heads, namely:

- (1) Provisions which concern parliament only.
- (2) Provisions which concern the provincial legislatures only.
- (3) Provisions which concern parliament and one or more but not all of the provincial legislatures.
- (4) Provisions which concern parliament and all of the provincial legislatures.
- (5) Provisions concerning fundamental rights (as for instance but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amendment of the amending procedures.
- (6) Provisions which should be repealed.

2. That in respect of group (1) amendment shall be made by an Act of the parliament of Canada.

3. That in respect of group (2) amendment shall be made by an Act of the provincial legislatures.

4. That in respect of group (3) provision be made for amendment by an Act of the parliament of Canada and an Act of the legislature of each of the provinces affected.

5. That in respect of group (4) provision be made for amendment by an Act of the parliament of Canada and Acts of such majority of the legislatures and upon such additional conditions, if any, as may be decided upon.

6. That in respect of group (5) provision be made for amendment by an Act of the parliament of Canada and Acts of the legislatures of all the provinces.

7. It is recommended that the process of amendment in respect of categories (3) to (6) inclusive of paragraph 1 be capable of being initiated by one or more of the provincial legislatures or by the parliament of Canada.

8. In the opinion of this committee the subject of delegation of powers should be placed upon the agenda.

All of which is respectfully submitted,

Stuart Garson,
Chairman

OTTAWA, January 12, 1950.

APPENDIX VI

Resolution respecting a Standing Committee of the Constitutional Conference

Resolved that this conference agree to:

- (1) The appointment of a standing committee representative of the federal government and the provincial governments, of which the Attorney-General of Canada shall act as chairman.
- (2) Presentation to the committee, with the least possible delay, by the federal government and the provincial governments of their views respecting the classification of each section of the B.N.A. Act, 1867, as amended, and all other constitutional acts of the United Kingdom parliament or other constitutional documents relating to Canada.
- (3) The standing committee shall use its best efforts to harmonize the views of the federal government and the provincial governments.
- (4) The committee shall, as soon as possible, report to the federal government and the provincial governments the results of its work.
- (5) The conference shall then re-assemble to determine finally the amending procedure to be recommended to the several legislative bodies concerned.

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